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HARVARD LAW SCHOOL
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67

State, Laws, Statutes, &c.
Codes, Criminal

THE

PENAL CODE^{of}

OF THE

STATE OF NEW YORK

BEING

or 676 of the Laws of 1881, as amended by
the Laws of 1882-1907, inclusive,

WITH

NOTES, FORMS AND INDEX

EDITED BY

AMASA J. PARKER, JR.,

OF THE ALBANY BAR

THE BANKS LAW PUBLISHING COMPANY
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1907

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Farmers & Merchants Bank & Trust Co.

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§ 2. Its effect.

No act or omission begun after the beginning of the day on which this Code takes effect as a law, shall be deemed criminal or punishable, except as prescribed or authorized by this Code, or by some statute of this state not repealed by it. Any act or omission begun prior to that day may be inquired of, prosecuted and punished in the same manner as if this Code had not been passed.

People ex rel. McDonald v. Keeler, 99 N. Y. 474; 2 N. Y. Cr. Rep. 108; 32 Hun, 589; *People v. Beckwith*, 108 N. Y. 72; 7 N. Y. Cr. Rep. 146; *Darrow v. Family Fund Society*, 116 N. Y. 542; 27 N. Y. St. Rep. 476; 42 Hun, 249; *People v. Raymond*, 32 Hun, 123; *Matter of Hallenbeck*, 65 How. 401; *People v. Sadler*, 97 N. Y. 146; 3 N. Y. Cr. Rep. 474; *People v. Bernardo*, 1 N. Y. Cr. Rep. 245; *Jaehne v. People*, 6 N. Y. Cr. Rep. 237; *People v. O'Neil*, 109 N. Y. 281; *People v. Moran*, 54 Hun, 279; 7 N. Y. Cr. Rep. 329. See Fed. Const., art. 1, § 10, subd. 1; also 27 Alb. L. J. 347.

§ 3. Definition of "crime."

A crime is an act or omission forbidden by law, and punishable upon conviction by

1. Death; or
2. Imprisonment; or
3. Fine; or
4. Removal from office; or
5. Disqualification to hold any office of trust, honor, or profit under the state; or
6. Other penal discipline.

Power to make crime. *Lawton v. Steele*, 119 N. Y. 233; *People v. West*, 106 N. Y. 295; *Bertholf v. O'Reilly*, 74 N. Y. 509; *People v. Clipperly*, 37 Hun, 324; 101 N. Y. 634; *People v. Hislop*, 77 N. Y. 331; *People v. Gillson*, 109 N. Y. 406.

What is a crime. Public intoxication. *People ex rel. Kopp v. French*, 102 N. Y. 583; *People ex rel. Shortell v. Markell*, 20 Misc. 149.

Neglect to perform duty enjoined by law. *People v. Meakim*, 133 N. Y. 214. Suicide is not a crime. *Darrow v. Family Fund Society*, 42 Hun, 247; S. C., 116 N. Y. 537.

See *McCord v. People*, 46 N. Y. 470, and 1 Bouv. 410; *Hamilton v. People*, 57 Barb. 625; *Morris v. People*, 3 Denio, 381; *People v. Reed*, 47 Barb. 235; *People v. Adams*, 16 Hun, 549; *People v. Terrell*, 33 N. Y. St. Rep. 368.

§ 4. Division of crimes.

- A crime is either
1. A felony; or
 2. A misdemeanor.

People v. Richards, 108 N. Y. 137; 18 N. Y. St. Rep. 515, rev'd 44 Hun, 278; 5 N. Y. Cr. Rep. 355; 7 N. Y. St. Rep. 756; *People v. Lyon*, 99 N. Y. 219; 3 N. Y. Cr. Rep. 166; *People v. Lenhardt*, 4 N. Y. Cr. Rep. 326.

§ 5. Definition of felony.

- A felony is a crime which is or may be punishable by either

1. Death; or
- 2.

2. Imprisonment in a state prison.

People v. Johnson, 110 N. Y. 141; *People v. Lyon*, 99 N. Y. 210; 3 N. Y. Cr. Rep. 186; *People v. Van Steenburgh*, 1 Park. 89; *People v. Cole*, 2 N. Y. Cr. Rep. 108; *People v. Johnson*, 46 Abb. Pr. 132; *People v. Bouk*, 99 N. Y. 5; *People v. Park*, 41 N. Y. 21; *People v. Borges*, 6 Abb. Pr. 132; *People v. Cooper*, 3 N. Y. Cr. Rep. 119; *People v. Carter*, 88 Hun, 305; *People v. Richards*, 5 N. Y. Cr. Rep. 364; 44 Hun, 283; *People v. Hughes*, 187 N. Y. 80.

§ 6. Definition of misdemeanor.

Any other crime is a misdemeanor.

People v. Bogart, 3 Abb. 193; *People v. Lyon*, 1 N. Y. Cr. Rep. 400; 99 N. Y. 219; *People v. Faber*, 92 N. Y. 149; *People ex rel. Devoe v. Kelly*, 97 N. Y. 212; 2 N. Y. Cr. Rep. 432; 32 Hun, 536; *People v. Finn*, 26 Hun, 60; *People v. Cooper*, 3 N. Y. Cr. Rep. 119; *People v. Richards*, 5 N. Y. Cr. Rep. 364; *People v. Carter*, 88 Hun, 305; *People v. Sweeney*, 41 Hun, 340; *People v. Upson*, 79 Hun, 90; *People v. Richards*, 44 Hun, 283; *People v. Markell*, 20 Misc. 149.

§ 7. Objects of the Penal Code.

This Code specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each.

People v. McTameney, 1 N. Y. Cr. Rep. 437; *People v. Jaehne*, 103 N. Y. 193; *Matter of Hallenbeck*, 65 How. 401; *People v. McTameney*, 30 Hun, 506; 13 Abb. N. C. 58; 66 How. 70.

§ 8. Procedure, how regulated.

The manner of prosecuting and convicting criminals is regulated by the Code of Criminal Procedure.

Code Crim. Pro., enacted by ch. 442 of 1881, and acts amendatory thereof. *People v. Beckwith*, 108 N. Y. 73; *Matter of McDonald*, 32 Hun, 589, n.

§ 9. Conviction must precede punishment.

The punishments prescribed by this Code can be inflicted only upon a legal conviction in a court having jurisdiction.

See N. Y. Const., art. 1, § 1; § 3, Code Crim. Pro.

People v. Faber, 92 N. Y. 148, 151; *Davis v. Am. Soc.*, etc., 75 N. Y. 362; *Ex parte Trimble*, 62 How. Pr. 61; *People v. Bork*, 98 N. Y. 188; *Matter of McDonald*, 2 N. Y. Cr. Rep. 107; 32 Hun, 589; *People v. Marra*, 4 N. Y. Cr. Rep. 304; *Ex parte Janes*, 30 How. Pr. 446; *People v. Lyon*, 27 Hun, 180; *People v. Hislop*, 77 N. Y. 331; *Blaufus v. People*, 69 N. Y. 107; *Ex parte Coughlin*, 62 How. Pr. 34; *Ex parte Bayard*, 61 How. Pr. 294, rev'd 25 Hun, 546.

§ 10. Jury to find degree of crime.

Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, must find the degree of the crime, of which he is guilty.

See §§ 33, 436-438, 440, post; § 444, Code Crim. Pro.

People v. Kelly, 35 Hun, 295; Code Crim. Pro., § 444; *McNevins v. People*, 61 Barb. 307; *People v. Rugg*, 98 N. Y. 537; 3 N. Y. Cr. Rep. 172; *People v. Stout*, 81 Hun, 339; *Grannan v. Westchester Racing Assn.*, 16 App. Div. 20.

§ 11. General rules of construction of this act.

The rule that a penal statute is to be strictly construed does not apply to this Code or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law.

Grannan v. Westchester Racing Assn., 16 App. Div. 20; *People v. Palmer*, 108 N. Y. 117; 15 N. Y. St. Rep. 78; 43 Hun, 408; 17 Week. Dig. 492; *People v. Morton*, 2 N. Y. Cr. Rep. 320; *People v. Moore*, 37 Hun, 84; *People v. McTamey*, 80 Hun, 506; 13 Abb. N. C. 56; 66 How. 70; 1 N. Y. Cr. Rep. 437; *People v. Whedon*, 2 N. Y. Cr. Rep. 318; *Fitzgerald v. Quann*, 109 N. Y. 441; *People v. Fielding*, 36 App. Div. 410; *People v. Phelps*, 183 N. Y. 269; 44 N. Y. St. Rep. 911; *Matter of Hallenbeck*, 1 N. Y. Cr. Rep. 437; 65 How. 401; *People v. Kerin*, 39 Hun, 631; *People v. Richards*, 108 N. Y. 139; *People v. Bauer*, 37 Hun, 408; *People ex rel. Devoe v. Kelly*, 97 N. Y. 215; 32 Hun, 540; *Cowley v. People*, 83 N. Y. 468; *Thomas v. Mut. Protective Union*, 49 Hun, 82; *People v. Moran*, 128 N. Y. 283; 7 N. Y. Cr. Rep. 336; 27 N. Y. St. Rep. 20; 54 Hun, 279; rev'd 8 N. Y. Cr. Rep. 114; 33 N. Y. St. Rep. 398; *People v. Fanshawe*, 47 N. Y. St. Rep. 831, rev'd 50 N. Y. St. Rep. 8; *People v. Jaehne*, 103 N. Y. 193; 3 N. Y. St. Rep. 11; *People v. Stevens*, 109 N. Y. 162; 14 N. Y. St. Rep. 808; *People v. Most*, 128 N. Y. 113; 38 N. Y. St. Rep. 829; *People v. Martin*, 77 App. Div. 396.

§ 12. Of sections declaring crimes punishable.

The several sections of this Code which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed, but such court may in its discretion suspend sentence, during the good behavior of the person convicted, where the maximum term of imprisonment prescribed by law does not exceed ten years and such person has never been convicted of a felony. Courts of special sessions are empowered to suspend sentence and at any time within the longest period for which a defendant might have been sentenced, may issue process for the re-arrest of the defendant, and when arraigned the court as it is then constituted may proceed to enter judgment and impose sentence. In the case of children under sixteen years of age, at the time of conviction, the longest period of time after suspension of sentence within which a sentence may be imposed for such offense shall be one year; and in any proceeding of a criminal nature, triable before a magistrate, the magistrate upon conviction, may suspend sentence and place the offender under probation and at any time thereafter, during the longest period for which he could have been committed in the first instance, such magistrate, or his successor, if his term has expired, may pronounce any judgment or sentence or impose any fine or other penalty, or make any commitment which might have been pronounced, imposed or made at the time the conviction was had.

Am'd by ch. 279 of 1893, and ch. 655 of 1905.

See § 471 et seq., Code Crim. Pro.

People v. Bauer, 37 Hun, 407; 3 N. Y. Cr. Rep. 433; see Code Crim. Pro., § 471 et seq.; *People v. Ct. of Ses. of Monroe Co.*, 46 N. Y. St. Rep. 254; *People v. Ct. of Ses.*, 66 Hun, 552; *People v. Ct. of Ses.*, 141 N. Y. 293; *People v. Ct. of Ses. of Monroe Co.*, 50 N. Y. St. Rep. 236; *People v. Webster*, 14 Misc. 619.

§ 13. Punishments, how determined.

Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars.

Am'd by ch. 218 of 1892.

See § 705, post.

People v. Masten, 79 Hun, 582; People v. Bauer, 37 Hun, 407; 3 N. Y. Cr. Rep. 433.

§ 14. Punishment of felonies when not fixed by statute.

A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this Code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by a fine of not more than one thousand dollars, or by both.

People v. Meakim et al., 133 N. Y. 223.

§ 15. Id.; of misdemeanors.

A person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this Code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary, or county jail, for not more than one year or by a fine of not more than five hundred dollars, or by both.

See § 706, post; § 717, Code Crim. Pro.

Foote v. People, 56 N. Y. 321; People v. Palmer, 43 Hun, 408; 3 N. Y. Cr. Rep. 107; 6 N. Y. St. Rep. 341; People v. Risley, 38 Hun, 280; People v. Carter, 48 Hun, 165; 15 N. Y. St. Rep. 840; People v. McTameney, 30 Hun, 505; 1 N. Y. Cr. Rep. 437; 13 Abb. N. C. 56; 66 How. Pr. 75; People v. Kelly, 97 N. Y. 212; 2 N. Y. Cr. Rep. 437, aff'g 32 Hun, 540; Matter of Hallenbeck, 65 How. Pr. 501; 1 N. Y. Cr. Rep. 437; People v. Upton, 38 Hun, 110; Loos v. Wilkinson, 113 N. Y. 485; 23 N. Y. St. Rep. 282, rev'g 51 Hun, 85; 10 N. Y. St. Rep. 297; 5 N. Y. Supp. 414; People v. Sadler, 97 N. Y. 146; 8 N. Y. Cr. Rep. 474, aff'g 2 N. Y. Cr. Rep. 439; Burns v. Norton, 55 N. Y. St. Rep. 418; People v. Christy, 47 N. Y. St. Rep. 926; 65 Hun, 351; 20 N. Y. Supp. 279; People v. Meakim, 133 N. Y. 224; 8 N. Y. Cr. Rep. 412; 44 N. Y. St. Rep. 752, aff'g 61 Hun, 327; 40 N. Y. St. Rep. 686; People v. Knatt, 156 N. Y. 305; People v. Stock, 26 App. Div. 568; People v. Woodworth, 78 Hun, 587; People v. England, 91 Hun, 153; Matter of Vanderhoff, 15 Misc. 435; People v. Parr, 4 N. Y. Cr. Rep. 546. Selling lager beer. People v. Olceese, 41 Misc. 102.

TITLE I.**Persons Punishable for Crime.**

- Sec. 16. What persons are punishable criminally.
 17. Presumption of responsibility in general.
 18. Id., as to child under seven years.
 19. Id., as to child of seven years or more.
 20, 21. Irresponsibility, etc., of idiot, lunatic, etc.
 22. Intoxicated persons
 23. Morb'd criminal propensity.
 24. Rule as to married woman.
 25. Rule as to persons acting under threats, etc.
 26. Id., when act done in defense of self or another.
 27. Exemption of public ministers.

§ 16. What persons are punishable criminally.

The following persons are liable to punishment within the state:

1. A person who commits within the state any crime, in whole or in part;
2. A person who commits without the state any offense which, if committed within the state, would be larceny under the laws of the state, and is afterward found, with any of the property stolen or feloniously appropriated within this state;
3. A person who, being without the state, causes, procures, aids, or abets another to commit crime within the state;
4. A person who, being out of this state, abducts or kidnaps by force or fraud, any person contrary to the laws of the place where such act is committed, and brings, sends or conveys such person within the limits of this state, and is afterward found therein.
5. A person who, being out of this state and with intent to cause within it a result contrary to the laws of this state, does an act which in its natural and usual course results in an act or effect contrary to its laws.

See §§ 185, 540, 676, post; also §§ 133-140, Code Crim. Pro.

Murphy v. English, 64 How. 362; *Hamilton v. People*, 57 Barb. 625; *Baker v. Richardson*, 1 Cow. 77; *People v. Schenck*, 2 Johns. 479; *People v. Lyon*, 99 N. Y. 219; 1 N. Y. Cr. Rep. 400; 3 N. Y. Cr. Rep. 161; *Smith v. Brown*, 1 Wend. 231; *People v. Adams*, 1 N. Y. 173; 3 Den. 190; *People v. Wilson*, 3 Park. 199; *Morris v. People*, 3 Den. 381; *Abbott v. People*, 75 N. Y. 602; *People v. Marine Court*, 6 Hun, 214; *People v. Rowe*, 1 Sheld. 81; *People v. Gardner*, 2 Johns. 477; *People v. Bork*, 91 N. Y. 5; *People v. Marra*, 4 N. Y. Cr. Rep. 304; *People v. Bliven*, 112 N. Y. 79; 14 N. Y. St. Rep. 495; *Western*, etc., *Co. v. Kilderhouse*, 87 N. Y. 435

§ 17. Presumption of responsibility in general.

A person is presumed to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, except as otherwise prescribed in this Code.

People v. Taylor, 138 N. Y. 407; 52 N. Y. St. Rep. 919; *People v. Adams*, 16 Hun, 549; *People v. Conroy*, 97 N. Y. 62, aff'g 33 Hun, 119; *Walter v. People*, 32 N. Y. 147; *People v. Robinson*, 2 Park. 235; 1 Park. 646; *O'Brien v. People*, 48 Barb. 274; *People v. Foster*, 50 N. Y. 609; *People v. Fish*, 125 N. Y. 153; 8 N. Y. Cr. Rep. 143; 34 N. Y. St. Rep. 843.

PERSONS PUNISHABLE FOR CRIME. §§ 18-20

§ 18. Id., as to child under seven years.

A child under the age of seven years is not capable of committing crime.

McCarthy v. N. Y. C. & H. R. R. Co., 37 App. Div. 189; *Stone v. Dry D., etc.*, R. Co., 115 N. Y. 104; 23 N. Y. St. Rep. 551; *Moebus v. Herrman*, 108 N. Y. 853; *Kunz v. City of Troy*, 104 N. Y. 344; *Mangan v. Brooklyn R. Co.*, 38 N. Y. 455; *McMahon v. Mayor, etc.*, 33 N. Y. 642; *Fallon v. Central Park, etc., Co.*, 49 N. Y. 255; *Wendell v. N. Y. C. R. Co.*, 91 N. Y. 420.

§ 19. Id.; as to child of seven years or more.

A child of the age of seven years, and under the age of twelve years, is presumed to be incapable of crime, but the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him and to know its wrongfulness. Whenever in any legal proceedings it becomes necessary to determine the age of a child, the child may be produced for personal inspection, to enable the magistrate, court or jury, to determine the age thereby; and the court or magistrate may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of age. A copy of the record of baptism of any child in any parish register, or register kept in a church, or by a clergyman thereof, or a certificate of baptism duly authenticated by the person in charge of such register, or who administered said baptism, and also a transcript of the record of birth recorded in any bureau of vital statistics or board of health, duly authenticated by its secretary or under its seal, and the entries made in a family Bible, shall also be competent evidence upon the question of the age.

Am'd by ch. 46 of 1884, and ch. 145 of 1888.

See § 279, post; also § 933, Code Crim. Pro. See also 37 Alb. L. J. 130.

People v. Stott, 4 N. Y. Cr. Rep. 308; *McCarthy v. N. Y. C. & H. R. R. Co.*, 37 App. Div. 189; *Stone v. Dry Dock, etc.*, 115 N. Y. 109; 23 N. Y. St. Rep. 551; *People v. Randolph*, 2 Park, 174; *Bullock v. Babcock*, 3 Wend. 391; *Stevenson v. Kaiser*, 59 N. Y. St. Rep. 516; *People v. Kendall*, 25 Wend. 399; *People v. Sheppard*, 44 Hun, 565; 5 N. Y. Cr. Rep. 136; 9 N. Y. St. Rep. 35; *Matter of Serafino*, 66 How. Pr. 178; *People ex rel. Zeigler v. Special Sessions*, 10 Hun, 224; *People v. Plath*, 100 N. Y. 590, rev'd 3 N. Y. Cr. Rep. 129; *People v. Walker*, 5 C. H. Rec. 137; *People v. Townsend*, 3 Hill, 479; *People v. Domenico*, 45 Misc. 309.

Child of eleven. *People v. Squazza*, 40 Misc. 71.

§ 20. Irresponsibility, etc., of idiot, lunatic, etc.

An act done by a person who is an idiot, imbecile, lunatic, or insane, is not a crime. A person cannot be tried, sentenced to any punishment, or punished for a crime, while he is in a state of idiocy, imbecility, lunacy, or insanity, so as to be incapable of understanding the proceeding or making his defense.

Am'd by ch. 384 of 1882.

Burden of proof. *People v. Cole*, 7 Abb. Pr. (N. S.) 321; *O'Brien v. People*, 48 Barb. 274; *Wagner v. People*, 2 Keyes, 684; 4 Abb. Dec. 509; *People v. Schryver*, 42 N. Y. 1; *People v. McCann*, 16 N. Y. 58; *O'Connell v. People*, 87 N. Y. 377; 41 Am. Rep. 379; *Brotherton v. People*, 75 N. Y. 159; *Casey v. People*, 31 Hun, 158; 2 N. Y. Cr. Rep. 187; *Walker v. People*, 88 N. Y. 81; *Walters v. People*, 32 N. Y. 147; *People v. Robinson*,

1 Park. 649; People v. Taylor, 138 N. Y. 407; People v. Hoch, 150 N. Y. 306.

Proof. People v. Barber, 115 N. Y. 457; People v. Hawkins, 109 N. Y. 406; Kemmler's case, 119 N. Y. 580; People v. Packenham, 115 N. Y. 200; De Witt v. Bailey, 17 N. Y. 348; O'Brien v. People, 36 N. Y. 276; Real v. People, 42 N. Y. 282; People v. Wood, 36 N. Y. St. Rep. 952; People v. McElvaine, 125 N. Y. 600; 36 N. Y. St. Rep. 181; Freedman v. People, 4 Den. 9; Patterson v. People, 46 Barb. 625; People v. Haight, 13 Abb. N. C. 198; 3 N. Y. Cr. Rep. 61.

Doctrine of responsibility stated. People v. Pine, 2 Barb. 566; Flanagan v. People, 52 N. Y. 467; People v. Waltz, 50 How. Pr. 204; 3 Abb. N. C. 209; Clark's case, 1 C. H. Rec. 176; People v. Beno Ville, 3 Abb. N. C. 125; Staudeman's case, 3 Abb. N. C. 187; Jenisch case, 3 Abb. N. C. 200; Moett v. People, 85 N. Y. 373; Walker v. People, 88 N. Y. 86; 1 N. Y. Cr. Rep. 27; Walsh v. People, 88 N. Y. 458; People v. Coleman, 1 N. Y. Cr. Rep. 1; Sanchez v. People, 4 Park. 535; 22 N. Y. 147; 18 How. 72; Lake v. People, 1 Park. 495; Sindram v. People, 88 N. Y. 196; People v. Barber, 115 N. Y. 475; People v. McElvaine, 125 N. Y. 600; 36 N. Y. St. Rep. 181; People v. Carpenter, 107 N. Y. 250; 4 N. Y. Cr. Rep. 187; People v. Mills, 98 N. Y. 176; O'Brien v. People, 48 Barb. 274; People v. Conroy, 153 N. Y. 183; People v. Burgess, 153 N. Y. 569; Willis v. People, 32 N. Y. 715; 5 Park. 621; People v. Walworth, 4 N. Y. Cr. Rep. 355; People v. Sprague, 2 Park. 43; People v. McFarland, 8 Abb. (N. S.) 57; People v. Rhinlander, 2 N. Y. Cr. Rep. 340; People v. Tuczkevitz, 149 N. Y. 248.

See decision that mental disease is defense, although defendant knew right from wrong. Parsons v. State, 81 Ala. 577; 60 Am. Rep. 193; 36 Alb. L. J. 221; and editorial on decision, 36 Alb. L. J. 221; cited 32 Iowa, 49; Arnold's case, 16 How. St. Tr. 764; McNaughten's case, 10 Cl. & F. 200; 2 Law. Cr. Def. 150; Boswell v. State, 63 Ala. 307; 35 Am. Rep. 20; 2 Law. Cr. Def. 352; McAllister v. State, 17 Ala. 434; Lawson Insanity, 219-221; Boswell's case, 1 Whart. Cr. Law, 43; State v. Pike, 49 N. H. 399; Hadfield's case, 27 How. St. Tr. 1282; 2 Law. Cr. Def. 201; United States v. Lawrence, 4 Cr. C. C. 518; United States v. Guiteau, 10 Fed. Rep. 161; 2 Law. Cr. Def. 162; Rex v. Oxford, 2 C. & P. 225; State v. Felter, 35 Iowa, 68; Hoppe v. People, 31 Ill. 385; Bradley v. State, 31 Ind. 492; Harris v. State, 18 Tex. Ct. App. 287; 5 Am. Cr. Rep. 357; State v. Pike, 48 N. H. 399; State v. Jones, 50 N. H. 369; 9 Am. Rep. 242; State v. John, 40 Conn. 136; State v. McWhorter, 46 Iowa, 88; Cunningham v. State, 56 Miss. 269.

§ 21. Irresponsibility, etc., of idiot, lunatic, etc.

A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, or of unsound mind, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason, as either

1. Not to know the nature and quality of the act he was doing;
or

2. Not to know that the act was wrong.

Am'd by ch. 384 of 1882.

See cases cited under § 20.

People v. Coleman, 1 N. Y. Cr. Rep. 1; Casey v. People, 31 Hun, 158; 2 N. Y. Cr. Rep. 187; People v. Walworth, 4 N. Y. Cr. Rep. 355; O'Connell v. People, 87 N. Y. 377; 62 How. 436; O'Brien v. People, 36 N. Y. 276; 48 Barb. 274; Real v. People, 42 N. Y. 270; 55 Barb. 551; People v. Mills, 98 N. Y. 176; Brotherton v. People, 75 N. Y. 159; People v. Hawkins, 109 N. Y. 408; People v. Packenham, 115 N. Y. 200; De Witt v. Bailey, 17 N. Y. 348; Clapp v. Fullerton, 34 N. Y. 190; People v. Ferraro, 161 N. Y. 277; People v. Burgess, 153 N. Y. 561; Willis v. People, 32 N. Y. 715; People



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v. Waltz, 50 How. Pr. 204; 3 Abb. N. C. 300; People v. Conroy, 2 N. Y. Cr. Rep. 565; People v. Tucskewitz, 149 N. Y. 248; Flanagan v. People, 52 N. Y. 467; People v. Sprague, 2 Park. 43; People v. Pine, 2 Barb. 566; Wagner v. People, 2 Keyes, 684; 4 Abb. Dec. 509; MacFarland's trial, 8 Abb. Pr. (N. S.) 57; People v. Montgomery, 13 Abb. Pr. (N. S.) 207; Sanchez v. People, 22 N. Y. 147; 18 How. 72; 4 Park. 535; People v. Moett, 28 Hun, 60; People v. Taylor, 138 N. Y. 407; 52 N. Y. St. Rep. 919; People v. Carpenter, 102 N. Y. 260; 4 N. Y. Cr. Rep. 187; People v. Haight, 3 N. Y. Cr. Rep. 61; 18 Abb. N. C. 198; People v. Rhinelander, 2 N. Y. Cr. Rep. 340; Patterson v. People, 46 Barb. 625; People v. Beno Ville, 3 Abb. N. O. 195; Lake v. People, 1 Park. 495; Krom v. Schoonmaker, 3 Barb. 467; Sindram v. People, 88 N. Y. 196; People v. Barber, 115 N. Y. 475; Stauderman's case, 3 Abb. N. C. 187; Jenisch's case, 3 Abb. N. C. 200; People v. Silverman, 181 N. Y. 236.

§ 22. Intoxicated persons.

No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

Intoxication may be considered by the jury in determining intent. O'Brien v. People, 48 Barb. 274; People v. Conroy, 33 Hun, 119; 2 N. Y. Cr. Rep. 247; People v. Burns, 2 N. Y. Cr. Rep. 415; People v. Mills, 98 N. Y. 176; 3 N. Y. Cr. Rep. 184; People v. Fish, 125 N. Y. 136; 34 N. Y. St. Rep. 843; People v. Leonardi, 143 N. Y. 380; People v. Corey, 148 N. Y. 476; People v. Martin, 33 App. Div. 282.

Intoxication is no excuse for crime. People v. Pearce, 2 Edm. Sel. Cas. 76; People v. Jones, 2 Edm. Sel. Cas. 86; People v. Batting, 49 How. 392; People v. Eastwood, 14 N. Y. 562; People v. Rogers, 18 N. Y. 9; Kenny v. People, 31 N. Y. 330; 27 How. Pr. 202; Frivey v. People, 54 Barb. 319; Lanergan v. People, 6 Park. 209; People v. Porter, 2 Park. 14.

§ 23. Morbid criminal propensity.

A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

People v. Carpenter, 4 N. Y. Cr. Rep. 177; People v. Otto, 4 N. Y. Cr. Rep. 154; People v. Otto, 38 Hun, 97; People v. French, 102 N. Y. 587; People v. Waltz, 50 How. 204; Flanagan v. People, 52 N. Y. 467; People v. Carpenter, 102 N. Y. 260.

§ 24. Rule as to married woman.

It is not a defense, to a married woman charged with crime, that the alleged criminal act was committed by her in the presence of her husband.

People v. Townsend, 3 Hill, 479; Boyd's case, 3 C. H. Rec. 134; Seller v. People, 77 N. Y. 411; Goldstien et al. v. People, 10 Week. Dig. 506; 82 N. Y. 231; People v. Ryland, 28 Hun, 568, aff'd, 2 N. Y. Cr. Rep. 438; 97 N. Y. 126; Goodman's case, 6 C. H. Rec. 21; Brown's case, 3 C. H. Rec. 56; Brandon's case, 4 C. H. Rec. 140; Quinlan v. People, 6 Park. 9; Rooney's case, 8 C. H. Rec. 126.

§ 25. Rule as to persons acting under threats, etc.

Where a crime is committed or participated in by two or more persons, and is committed, aided, or participated in by any one of them, only because, during the time of its commission, he is compelled to do, or to aid or participate in the act, by threats of another person engaged in the act or omission, and reasonable apprehension on his part of instant death or grievous bodily harm, in case he refuses, the threats and apprehension constitute duress, and excuse him.

Goldstein v. People, 82 N. Y. 231.

§ 26. Id., when act done in defense of self or another.

An act, otherwise criminal, is justifiable when it is done to protect the person committing it, or another whom he is bound to protect, from inevitable and irreparable personal injury, and the injury could only be prevented by the act, nothing more being done than is necessary to prevent the injury.

See §§ 79-81, Code Crim. Pro.; also §§ 203-205, 228, post.

A person attacked, if justified in reasonably apprehending bodily harm and the danger imminent, may kill his assailant. *People v. Shorter*, 2 N. Y. 198; *People v. Carlton*, 115 N. Y. 618; *People v. McGrath*, 47 Hun, 325; *People v. Lamb*, 54 Barb. 342; *Patterson v. People*, 46 Barb. 625.

The assailed must avoid attack, if possible. *People v. Sullivan*, 7 N. Y. 896; *People v. Johnson*, 139 N. Y. 358; *People v. Kennedy*, 159 N. Y. 346.

Force used in defense of real property. *Cory v. People*, 45 Barb. 262; *Wood v. Phillips*, 43 N. Y. 152; *Kiff v. Youmans*, 86 N. Y. 324. See *Morgan v. Durfee*, 21 Alb. L. J. 215.

Defense of personal property. *Gyre v. Culver*, 47 Barb. 592; *People v. Filkins*, 1 Shield. 511.

Force may be used to prevent the consummation of a felony. *Ruloff v. People*, 45 N. Y. 218; 11 Abb. (N. S.) 245; 5 Lans. 261. See *Evers v. People*, 8 Hun, 716; *People v. Lyons*, 6 N. Y. Cr. Rep. 105; *People v. Hall*, 2 N. Y. Cr. Rep. 134.

§ 27. Exemption of public ministers.

Ambassadors and other public ministers from foreign governments, accredited to the president or government of the United States, and recognized according to the laws of the United States, with their secretaries, messengers, families and servants, are not liable to punishment in this state, but are to be returned to their own country for trial and punishment.

See § 2, art. 3, U. S. Const.

People v. Marine Court, 6 Hun, 214.

TITLE II.

Of Parties to Crime.

- Sec. 28. Principal and accessory.**
 29. Definition of principal.
 30. Definition of accessory.
 31. All principals in misdemeanors.
 32. Trials of accessories.
 33. Punishment of accessories.

§ 28. Principal and accessory.

A party to a crime is, either
 1. A principal; or,
 2. An accessory.

People v. Sanborn, 14 N. Y. St. Rep. 125.

§ 29. Definition of principal.

A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal.

People v. Fitzgerald, 106 N. Y. 146; 5 N. Y. Cr. Rep. 343; 6 N. Y. St. Rep. 328, rev'd 43 Hun, 35; 6 N. Y. St. Rep. 599; *People v. Bassford*, 8 N. Y. Cr. Rep. 223; 21 Week. Dig. 349; *People v. Cotto*, 131 N. Y. 579; 42 N. Y. St. Rep. 715; *People v. Phelps*, 61 Hun, 117; 39 N. Y. St. Rep. 599; *People v. Bosworth*, 64 Hun, 74; 45 N. Y. St. Rep. 517; 19 N. Y. Supp. 115; *People v. Tower*, 135 N. Y. 459; 48 N. Y. St. Rep. 438; *People v. McMurray*, 4 Park, 234; *People v. Wlley*, 48 N. Y. St. Rep. 500; 20 N. Y. Supp. 446; *People v. McKane*, 143 N. Y. 463; 80 Hun, 827; *People v. Wilson*, 45 N. Y. 631; *People v. McLaughlin*, 150 N. Y. 384; 2 App. Div. 431; *People v. Sharp*, 107 N. Y. 427; 12 N. Y. St. Rep. 217, rev'd 45 Hun, 502; 10 N. Y. St. Rep. 522; *People v. Sebring*, 14 Misc. 40; *Anderson v. Schlesinger*, 16 Misc. 536; *People v. Peckens*, 153 N. Y. 585; *Shad v. Security Mut. L. Assn.*, 11 App. Div. 490; *People v. Knatt*, 158 N. Y. 305; *People v. Stock*, 26 App. Div. 568; *People v. Katz*, 23 How. 94; *People v. Fielding*, 36 App. Div. 418; *People v. Rivello*, 39 App. Div. 455; *Warden v. Dorthy*, 160 N. Y. 56; *Wixson v. People*, 5 Park, 119; *People v. Hall*, 57 How. 342; *People v. Kief*, 126 N. Y. 661; 37 N. Y. St. Rep. 479, rev'd 58 Hun, 344; 34 N. Y. St. Rep. 533; 11 N. Y. Supp. 927; *Carrington v. People*, 6 Park, 336; *People v. Batterson*, 50 Hun, 44; *People v. McElroy*, 36 N. Y. St. Rep. 650; *McCartney v. People*, 83 N. Y. 413; *People v. Bliven*, 112 N. Y. 82; 20 N. Y. St. Rep. 487; 14 N. Y. St. Rep. 495; *Leonard v. Poole*, 114 N. Y. 371; *People v. Brien*, 53 Hun, 496; 25 N. Y. St. Rep. 239; 7 N. Y. Cr. Rep. 171; 6 N. Y. Supp. 199; *People v. Ryland*, 97 N. Y. 126; *People v. Sanborn*, 46 Hun, 682; 14 N. Y. St. Rep. 126; *People v. Martin*, 77 App. Div. 396; *People v. Mills*, 41 Misc. 195; *People v. Summerfield*, 48 Misc. 242; *People v. Du Veau*, 106 App. Div. 381; *People ex rel. Stearns v. Marr*, 181 N. Y. 425; *People v. Patrick*, 182 N. Y. 181.

§ 30. Definition of accessory.

A person who, after the commission of a felony, harbors, conceals, or aids the offender, with intent that he may avoid or escape from arrest, trial, conviction, or punishment, having knowledge or reasonable ground to believe that such offender is liable to arrest,

has been arrested, is indicted or convicted, or has committed a felony, is an accessory to the felony.

People v. Pedro, 19 Misc. 301; People v. McMurray, 1 Sheld. 563; People v. Sanborn, 14 N. Y. St. Rep. 125; People v. Hall, 57 How. Pr. 342; People v. Dunn, 53 Hun, 381; 7 N. Y. Cr. Rep. 173; 25 N. Y. St. Rep. 480; 6 N. Y. Supp. 805.

§ 31. All principals in misdemeanors.

A person who commits or participates in an act which would make him an accessory if the crime committed were a felony, is a principal and may be indicted and punished as such, if the crime be a misdemeanor.

See § 682, post.

Anderson v. Schlesinger, 16 Misc. 536; People v. Clark, 14 N. Y. Supp. 648; People v. Lyon, 33 Hun, 623; 2 N. Y. Or. Rep. 484; Lowenstein v. People, 54 Barb. 229; People v. Erwin, 4 Den. 129; Ward v. People, 3 Hill, 395; People v. Mathews, 4 Wend. 229; Commonwealth v. Dale, 144 Mass. 363.

§ 32. Trials of accessories.

An accessory to a felony may be indicted, tried, and convicted, either in the county where he became an accessory, or in the county where the principal felony was committed, and whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and although the principal has been pardoned or otherwise discharged after conviction.

See § 126, post.

People v. Bassford, 21 Week. Dig. 349; 3 N. Y. Cr. Rep. 219; Starin v. People, 45 N. Y. 333; Levy v. People, 80 N. Y. 327; 19 Hun, 388; People v. Lyon, 99 N. Y. 210; People v. Gray, 25 Wend. 464; Jones v. People, 81 N. Y. 637; 20 Hun, 545; People v. Ryland, 97 N. Y. 126.

§ 33. Punishment of accessories

Except in a case where a different punishment is specially prescribed by law, a person convicted as an accessory to a felony is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

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TITLE III.

Degrees in the Commission of Crimes and Attempts to Commit Crimes.

- Sec. 34. What is an attempt to commit a crime.
35. Prisoner indicted may be convicted of lesser crime, or attempt.
36. Acquittal or conviction bars indictment for another degree, or attempt.

§ 34. What is an attempt to commit a crime.

An act, done with intent to commit a crime, and tending but failing to effect its commission, is an attempt to commit that crime.

See §§ 174, 685, post.

People v. Moran, 123 N. Y. 256; 33 N. Y. St. Rep. 396; 8 N. Y. Cr. Rep. 106, rev'd 54 Hun, 279; 27 N. Y. St. Rep. 23; 7 N. Y. Cr. Rep. 336; 7 N. Y. Supp. 584; People v. Dartmore, 48 Hun, 323; 2 N. Y. Supp. 311; 15 N. Y. St. Rep. 839; People v. Gardner, 144 N. Y. 123; 73 Hun, 68; People v. Kane, 43 App. Div. 474; People v. Lawton, 56 Barb. 128; McDermott v. People, 5 Park. 102; People v. Bush, 4 Hill, 134; Darrow v. Family Fund Society, 116 N. Y. 542, aff'g 42 Hun, 245; Sullivan v. People, 27 Hun, 35; People v. Phelps, 61 Hun, 115; 39 N. Y. St. Rep. 599; 15 N. Y. Supp. 442; Mulligan v. People, 5 Park. 105; People v. O'Connell, 60 Hun, 113; 38 N. Y. St. Rep. 106; 14 N. Y. Supp. 486; People v. Johnson, 46 Hun, 670; 13 N. Y. St. Rep. 48; Marrette's case, 3 C. H. Rec. 60; People v. Mills, 41 Misc. 196; People v. Du Veau, 105 App. Div. 381; People v. Conrad, 102 App. Div. 566.

When complete. People v. Spolasco, 33 Misc. 22.

§ 35. Prisoner indicted may be convicted of lesser crime, or attempt.

Upon the trial of an indictment, the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime.

See §§ 10 and 685, Penal Code; §§ 414-445, Code Crim. Pro. See also § 390, Code Crim. Pro.

People v. Stout, 81 Hun, 339; People v. Palmer, 5 N. Y. Cr. Rep. 105; 48 Hun, 406; 8 N. Y. St. Rep. 500; People v. Brockett, 85 Hun, 139; People v. Smith, 78 Hun, 180; People v. Kane, 43 App. Div. 474; People v. McTameney, 30 Hun, 506; 1 N. Y. Cr. Rep. 437; 66 How. Pr. 70; 13 Abb. N. C. 55; People v. Jackson, 3 Hill, 92; People v. Lyon, 1 N. Y. Cr. Rep. 400; People v. Dartmore, 48 Hun, 321; 2 N. Y. Supp. 310, 15 N. Y. St. Rep. 830; People v. Saunders, 4 Park. 196; Keefe v. People, 40 N. Y. 348; 7 Abb. (N. S.) 76; Nevins v. People, 61 Barb. 307; Dedieu v. People, 22 N. Y. 178; People v. Sullivan, 4 N. Y. Cr. Rep. 197, rev'd 27 Hun, 35; People v. Lohman, 2 Barb. 216; People v. McCallum, 3 N. Y. Cr. Rep. 199; Cox v. People, 80 N. Y. 514; People v. McDonnell, 92 N. Y. 657; 1 N. Y. Cr. Rep. 366; People v. Lawton, 56 Barb. 128; People v. McDonald, 49 Hun, 67; 17 N. Y. St. Rep. 494; Murphy v. People, 3 Hun, 114; Ruloff v. People, 45 N. Y. 213; 11 Abb. (N. S.) 245; Sindram v. People, 88 N. Y. 196, aff'g 1 N. Y. Cr. Rep. 14; People v. O'Connell, 60 Hun, 113; 38 N. Y. St. Rep. 106; 14 N. Y. Supp. 486; People v. Thompson, 41 N. Y. 1; People v. Petmecky, 2 N. Y. Cr. Rep. 452; People v. Wilson, 109 N. Y. 347; People v. Dedieu, 17 How. Pr. 224.

§ 36. Acquittal or conviction bars indictment for another degree, or attempt.

Where a prisoner is acquitted or convicted, upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime, in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof.

See §§ 9, 340, 341, Code Crim. Pro. See also N. Y. Const., art. 1, § 6. People v. Seeley, 3 N. Y. Cr. Rep. 232; People v. Oignarale, 110 N. Y. 23; 16 N. Y. St. Rep. 155; People v. McCarthy, 110 N. Y. 315; 18 N. Y. St. Rep. 267; Guenther v. People, 24 N. Y. 100; People v. Casborns, 13 Johns. 351; People v. Dowling, 84 N. Y. 478; People v. Palmer, 109 N. Y. 420; 15 N. Y. St. Rep. 78, rev'd 43 Hun, 397; 5 N. Y. Cr. Rep. 109; 8 N. Y. St. Rep. 500; People v. McDonald, 49 Hun, 70; 17 N. Y. St. Rep. 494; People v. Warren, 109 N. Y. 617; 14 N. Y. St. Rep. 34.

TITLE IV.

Treason.

Sec. 37. Treason against the state defined.

38. Id., how punished.

39. Levying war defined.

40. Resistance to a statute, when levying war.

§ 37. Treason against the state defined.

Treason against the people of the state consists in

1. Levying war against the people of the state, within this state; or

2. A combination of two or more persons by force to usurp the government of the state, or to overturn the same, shown by a forcible attempt, made within the state, to accomplish that purpose; or

3. Adhering to the enemies of the state, while separately engaged in war with a foreign enemy, in a case prescribed in the constitution of the United States, or giving to such enemies aid and comfort within the state or elsewhere.

People v. Lynch, 11 Johns. 549; People v. McLeod, 25 Wend. 482; 1 Hill, 377.

§ 38. Id., how punished.

Treason is punishable by death.

See §§ 396, 397, 814, 826, Code Crim. Pro. See also N. Y. Const., art. 4, § 5.

See also U. S. Const., art. 3, § 3.

§ 39. Levying war defined.

To constitute levying war against the people of this state, an actual act of war must be committed. To conspire to levy war is not enough.

United States v. Greathouse, 2 Abb. 364; 1 Bish. Crim. Law, § 1229.

§ 40. Resistance to a statute, when levying war.

Where persons rise in insurrection with intent to prevent in general by force and intimidation, the execution of a statute of this state, or to force its repeal, they are guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war.

United States v. Mitchell, 2 Dall. 348.

TITLE V.

Of Crimes against the Elective Franchise.

Sec. 41. Misdemeanors at political caucuses and conventions.

- 41a. False registration.
- 41aa. Misconduct of registry officers.
- 41b. Mutilation, destruction or loss of registry list.
- 41bb. Soliciting from candidates for an elective office money, etc.
- 41c. Misdemeanors of police commissioners, police officers et al.
- 41d. Failure of house-dweller to answer inquiries.
- 41e. Removal, mutilation or destruction of election supplies, poll-lists or cards of instruction.
- 41f. Refusal to permit employees to attend election.
- 41g. Misconduct in relation to certificates of nomination and official ballots.
- 41h. Failure to deliver official ballots.
- 41i. Misconduct of election officers and watchers.
- 41j. Violation of election law by public officer.
- 41k. Misdemeanors in relation to elections.
- 41l. Illegal voting.
- 41m. False returns.
- 41n. Furnishing money or entertainment to induce attendance at polls.
- 41o. Giving consideration for franchise.
- 41p. Receiving consideration for franchise.
- 41q. Testimony upon prosecution.
- 41r. Bribery or intimidation of elector in military service of United States.
- 41s. Duress and intimidation of voters.
- 41t. Conspiring to promote or prevent election.
- 41u. Political assessments.
- 41v. Corrupt use of position or authority.
- 41w. Failure to file candidates' statement of expenses.
- 41x. Procuring fraudulent certificates in order to vote.
- 41y. Presenting fraudulent certificates to registry boards to procure registration.
- 41z. (a) Soliciting from candidates.
- 41z. (b) Judicial candidates not to contribute.
- 41z. (c) Limitation of amounts to be expended by candidates.
- 41zz. Penalty.
- 41zzz. Certain expressions interpreted.

§ 41. Misdemeanors at political caucuses and conventions.

Any person who:

1. At a political caucus, or at a primary election of a party, willfully votes, or attempts to vote, without being entitled to do so, or votes, or attempts to vote, on any other name than his own, or on the same day more than once on his own name; or
2. Votes, or offers to vote, at a political caucus, or primary election of a party, having voted at the political caucus or primary election of any other political party on the same day, or being at the time enrolled in a party other than the party at whose primary he votes or offers to vote; or, who causes his name to be placed upon the rolls of a party organization of one party while his name is by his consent or procurement upon the rolls of a party organization of another party; or,
3. At a political caucus, or at a primary election, for the purpose of affecting the result thereof, votes or attempts to vote two or more ballots, or adds, or attempts to add, any ballot to those lawfully cast, by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or who adds to or mixes with, or attempts to add to or mix with, the

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ballots lawfully cast, another ballot or other ballots before the votes have been counted or canvassed, or while the votes are being counted or canvassed; or at any time abstracts any ballots lawfully cast, with intent to change the result of such election or to change the count thereat in favor of or against any person voted for at such election, or to prevent the ballots being recounted or used as evidence; or carries away, destroys, loses, conceals, detains, secretes, mutilates, or attempts to carry away, destroy, conceal, detain, secrete, or mutilate, any tally lists, ballot boxes, enrollment books, certificates of return, or any official documents provided for by the primary election law or otherwise by law, for the purpose of affecting or invalidating the result of such election, or of destroying evidence; or in any manner interferes with the officers holding any primary election or conducting the canvass of the votes cast thereat, or with voters lawfully exercising, or seeking to exercise, their right of voting at such primary election; or

4. For the purpose of securing enrollment as a member of a political party, or for the purpose of being allowed to vote at a primary election as a member of a political party, makes and deposits or files, or makes or deposits or files with a board of primary inspectors, or with any public officer or board, a false declaration of party affiliation or willfully makes a false declaration of residence, either by an enrollment blank or otherwise, or falsely answers any pertinent question asked him by the board of primary inspectors, or the board of election inspectors, or by a member thereof; or knowingly, on any day of registration or in the interval between any such day and the next ensuing day of general election, reveals or discloses the names or number of the enrolled electors of any party, or makes, publishes, or circulates a list of such names, or of any thereof, or does or permits any act by which the name of the party with which an elector has enrolled, or the number of electors enrolled with a party, may be disclosed; or

5. Fraudulently or wrongfully does any act tending to affect the result of any election at a political caucus or of any primary election or convention; or

6. Induces or attempts to induce any officer, teller, canvasser, poll clerk, primary election inspector, election inspector, custodian of primary records, or clerk or employee of or in the office of a custodian of primary records at a political caucus, or primary election, or convention, or while discharging any duty or performing any act required or made necessary by the primary election law, to do any act in violation of his duty, or in violation of the primary election law; or

7. Directly or indirectly, by himself or through any other person, pays, or offers to pay, money or other valuable thing, or promises a place or position, or offers any other consideration or makes any other promise, to any person, to induce any voter or voters to vote, or refrain from voting, at a political caucus, primary election, or convention, for or against any particular person or persons; or does or offers to do, anything to hinder or delay any elector from

taking part in, or voting at, a political caucus, or at a primary election; or

8. By menace or other unlawful or corrupt means, directly or indirectly, influences or attempts to influence, the vote of any person entitled to vote at a political caucus, primary election, or convention, or obstructs such person in voting, or prevents him from voting thereat; or

9. Directly or indirectly, by himself or through any other person, receives money or other valuable thing, or a promise of a place or position, before, at, or after any political caucus, primary election, or convention, for voting or refraining from voting for or against any person, or for voting or refraining from voting at a political caucus, primary election, or convention; or

10. Being an officer, teller, canvasser, primary inspector, at a political caucus, or at a primary election, knowingly permits any fraudulent vote to be cast, or knowingly receives and deposits in the ballot box any ballots offered by any person not qualified to vote; or permits the removal of ballots from the polling place before the close of the polls, or refuses to receive ballots intended for the electors of the district, or refuses to deliver to any elector ballots intended for the electors of the district which have been delivered to the board of inspectors, or permits electioneering within the polling place or within one hundred feet therefrom, or fails to keep order within the polling place, or permits any person other than the inspectors to accompany an elector into a voting booth, or enters the voting booth with any elector, except one entitled to receive assistance in the preparation of his ballot, or permits any person other than a voter, who has not voted, or watcher to come within the guard rail or removes or permits another to remove any mark placed upon a ballot for its identification, or

11. Being an officer, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, election inspector, primary inspector, or poll clerk, knowingly puts opposite the name of an elector in an enrollment book any enrollment number other than the number opposite such name on the registration books of such district, or knowingly delivers to or receives from any elector on any day of registration an enrollment blank or envelope on which is any other enrollment number than that so opposite his name on such books of registration, or knowingly transcribes from an enrollment blank to the enrollment books any refusal to enroll or enrollment not indicated on the enrollment blank of the elector of such district whose enrollment number appears on the same, or refuses or willfully neglects to transcribe from any enrollment blank to the proper enrollment books any refusal to enroll or enrollment indicated on the enrollment blank of such an elector, enrolls or attempts to enroll as a member of a political party, upon any of the enrollment books, any person not qualified to enroll as such, or fraudulently enters thereupon the name of any person who has not enrolled as a member of any political party, or refuses or willfully neglects to enroll upon any of the enrollment books the name of any qualified person who has demanded to be enrolled as a member of a political party, or at

any time strikes from any of the enrollment books the name of any person duly enrolled, or at any time adds to any of the enrollment books the name of any person not qualified to be enrolled as a member of a political party, or the name of any person who in fact has not enrolled as such; or makes marks upon, mutilates, carries away, conceals, alters, or destroys any enrollment blank or enrollment envelope used or deposited by an elector on a day of registration for the purpose of enrolling or refusing to enroll himself as a member of a political party; or mutilates, carries away, conceals, alters, or destroys any statement or declaration made by a qualified voter for the purpose of enrolling as a member of a party; or, prior to the close of the last meeting for registration in any year, mutilates, carries away, conceals, alters, or destroys any enrollment blanks or enrollment envelopes not then delivered to electors; or

12. Being an officer, teller, canvasser, election inspector, primary inspector, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, or any officer of a political committee or a convention, willfully omits, refuses or neglects to do any act required by the primary election law or otherwise by law, or violates any of the provisions of the primary election law, or makes or attempts to make any false canvass of the ballots cast at a political caucus, primary election, or convention, or a false statement of the result of a canvass of the ballots cast thereat; or

13. Being a custodian of primary records, or an officer of a political committee, or of a convention, who is charged with, or assumes, the duty of making up the preliminary roll of any convention, willfully includes in such roll the name of any person not certified to be elected thereto in accordance with the provisions of law, or who willfully omits from such roll the name of any person who is so certified to be a delegate to such convention;

Is guilty of a misdemeanor.

Am'd by ch. 693 of 1892, ch. 885 of 1895, ch. 197 of 1898, and ch. 530 of 1899. Subds. 2 and 6. Am'd by ch. 625 of 1905.

Subd. 10. Am'd by ch. 371 of 1901.

People v. England, 91 Hun, 154; People v. Lewis, 14 Misc. 264; 52 N. Y. Supp. 898; People v. McKane, 143 N. Y. 456.

§ 41a. False registration.

Any person who:

1. Causes or attempts to cause his name to be placed upon any list or register of voters in more than one election district for the same election, or more than once in the same election district, or

2. Who causes or attempts to cause his name to be placed upon a list or register of voters knowing that he, will not be a qualified voter in the district at the election for which such list or register is made, or

3. Who registers or attempts to register as an elector under any other name than his own, or

4. Who knowingly gives a false residence within the election district when registering as an elector, or

5. Who knowingly permits, aids, assists, abets, procures, commands or advises another to commit any such act is guilty of a felony, punishable by imprisonment in a state prison for not more than five years

Am'd by ch. 693 of 1892, ch. 255 of 1897, ch. 371 of 1901, and ch. 625 of 1905.
People ex rel. McShane v. Hagen, 48 App. Div. 203.

§ 41aa. Misconduct of registry officers.

Any member or clerk of a registry board who willfully violates any provision of the election law relative to registration of electors or willfully neglects or refuses to perform any duty imposed on him by law, or is guilty of any fraud in the execution of the duties of his office, is guilty of a felony punishable by imprisonment for not more than ten years.

Am'd by ch. 698 of 1892, and ch. 692 of 1893.

This was formerly § 41c and was renumbered 41aa and amended by ch. 625 of 1905.

People v. McKane, 143 N. Y. 462; 80 Hun, 327.

§ 41b. Mutilation, destruction or loss of registry list.

Any person who willfully loses, alters, destroys or mutilates the list or register of voters in any election district, or a certified copy thereof, or removes from the place of registration the public copy of such registration, after the making of the same and before the closing of the polls of the election for which the same is made, is guilty of a misdemeanor.

Am'd by ch. 698 of 1892, and ch. 625 of 1905.

§ 41bb. Soliciting from candidates for an elective office, money, etc.

Any person who solicits from a candidate for an elective office, money or other property as a consideration for a newspaper or other publication supporting any candidate for an elective office, is guilty of a misdemeanor.

Added by ch. 70 of 1900. In effect Sept. 1, 1900.

§ 41c. Misdemeanors of police commissioners, police officers et al.

Any person who, being a police commissioner or an officer or member of any police force in this state, either

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherents, affiliation, action, expression or opinion of any citizen; or

2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force, because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or

3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee;

Is guilty of a misdemeanor.

Added by ch. 529 of 1890.

Formerly § 41aa, renumbered § 41c by ch. 625 of 1905.

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§ 41d. Failure of housedweller to answer inquiries.

Any person dwelling in a building in a city who wilfully refuses to truly answer any question or who shall give false answers to any questions asked by any elector of such city, between the first meeting of the boards of registry therein for any election and the closing of the polls at such election, relating to the residence and qualifications as a voter of any person dwelling in such building, or of any person who appears upon the list or registry of voters made by a board of registry as residing at such building, or who knowingly harbors or conceals any person who has falsely registered as a voter, or who shall rent any room or rooms, bed or beds to any person to be used by such person for himself or any other person for the purpose of unlawfully registering or voting therefrom is guilty of a misdemeanor.

Am'd by ch. 321 of 1890, ch. 693 of 1892, ch. 371 of 1901, and ch. 625 of 1905.

§ 41e. Removal, mutilation or destruction of election supplies, poll-lists or cards of instruction.

Any person who :

1. During an election or town meeting, wilfully defaces or injures a voting booth or compartment, or wilfully removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments in pursuance of law ; or

2. Before the closing of the polls, wilfully defaces or destroys any list of candidates to be voted for at such election or town meeting, posted in accordance with the election law ; or

3. During an election or town meeting, wilfully removes or defaces the cards for the instruction of voters, posted in accordance with the election law, is guilty of a misdemeanor.

Am'd by ch. 693 of 1892, ch. 321 of 1890, and ch. 714 of 1894.

§ 41f. Refusal to permit employes to attend election.

A person or corporation who refuses to an employe entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employe to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

Am'd by ch. 321 of 1890, and ch. 693 of 1892.

§ 41g. Misconduct in relation to certificates of nomination, and official ballots.

A person who :

1. Falsely makes or makes oath to, or fraudulently defaces or destroys, a certificate of nomination or any part thereof; or

2. Files or receives for filing a certificate of nomination knowing that any part thereof was falsely made ; or

3. Suppresses a certificate of nomination which has been duly filed, or any part thereof; or

4. Forges or falsely makes the official indorsement of any ballot; or

5. Having charge of official ballots, destroys, conceals or suppresses them, except as provided by law,

Is punishable by imprisonment for not more than five years.

Am'd by ch. 321 of 1890, ch. 693 of 1892, and ch. 625 of 1905.

§ 41h. Failure to deliver official ballots.

Any person who has undertaken to deliver official ballots to any city, town or village clerk, or inspector, as authorized by the election law, and neglects or refuses to do so, is guilty of a misdemeanor.

Am'd by ch. 693 of 1892.

§ 41i. Misconduct of election officers and watchers.

Any election officer or watcher who :

1. Reveals to another person the name of any candidate for whom a voter has voted ; or
2. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted ; or
3. Places a mark upon a ballot, or does any other act by which one ballot can be distinguished from another, or can be identified ; or
4. Before the closing of the polls, unfolds a ballot which a voter has prepared for voting, is guilty of a misdemeanor.

Am'd by ch. 321 of 1890, ch. 693 of 1892, ch. 714 of 1894, and ch. 625 of 1905.

§ 41j. Violation of election law by public officer.

A public officer who omits, refuses or neglects to perform any act required of him by the election law, or refuses to permit the doing of any act authorized thereby, is, if not otherwise provided by law, punishable by imprisonment for not more than three years, or by a fine of not more than three thousand dollars, or both.

Am'd by ch. 693 of 1892.

People v. Gleason, 18 Misc. 512.

§ 41k. Misdemeanors in relation to elections.

Any person who :

1. Acts as an inspector of election, poll clerk or ballot clerk, without being able to read and write the English language, or without being otherwise qualified to hold such office ; or
2. Being an inspector of election, knowingly and willfully permits or suffers any person to vote who is not entitled to vote thereat ; or
3. Willfully and unlawfully obstructs, hinders or delays, or aids or assists in obstructing or delaying any elector on his way to a registration or polling place, or while he is attempting to register or vote ; or
4. Electioneers on election day within a polling place, or in a public street or in a building or room, unless such building or room has been maintained for such purpose for at least six months previous to said election day, or in any public manner within one hundred feet of a polling place ; or displays any political poster or placard, except those lawfully provided, in or upon any building used for registration or election purposes during any day for registration or election ; or
5. Removes any official ballot from a polling place before the closing of the polls ; or
6. Unlawfully goes within the guard-rail of any polling place or unlawfully remains within such guard-rail after having been commanded to remove therefrom by any inspector of election ; or

7. Enters a voting booth with any voter or remains in a voting booth while it is occupied by any voter, or opens the door of a

voting booth when the same is occupied by a voter, with the intent to watch such voter while engaged in the preparation of his ballot, except as authorized by the election law; or

8. Being or claiming to be a voter, permits any other person to be in a voting booth with him while engaged in the preparation of his ballot, except as authorized by the election law, without openly protesting against and asking that such person be ejected; or

9. Having lawfully entered a voting booth with a voter, requests, persuades or induces such voter to vote any particular ballot or for any particular candidate, or, directly or indirectly, reveals to another the name of any candidate voted for by such voter, or anything occurring within such voting booth; or

10. Shows his ballot after it is prepared for voting to any person so as to reveal the contents, or solicits a voter to show the same; or

11. Places any mark upon his ballot, or does any other act in connection with his ballot with the intent that it may be identified as the one voted by him; or

12. Places any mark upon, or does any other act in connection with, a ballot or pasted ballot, with the intent that it may afterwards be identified as having been voted by any particular person; or

13. Receives an official ballot from any person other than one of the ballot clerks having charge of the ballots; or

14. Not being a ballot clerk, delivers an official ballot to a voter; or

15. Not being an inspector of election, receives from any voter a ballot prepared for voting; or

16. Fails to return to the ballot clerks, before leaving the polling place or going outside the guard-rail, each ballot not voted by him; or

17. Willfully defaces, injures, mutilates, destroys or secretes any voting machine which belongs to any municipality for use at elections, and any person who commits or attempts to commit a fraud in the use of any such voting machine during an election; or

18. Willfully disobeys any lawful command of the board of inspectors, or any member thereof, is guilty of a misdemeanor. This section shall apply to general and special elections, municipal elections and town meetings, but nothing therein shall prevent any person from receiving or delivering an unofficial sample ballot, or from receiving, delivering and voting an unofficial ballot, as authorized by the election law.

Am'd by ch. 693 of 1892, and ch. 714 of 1894; subd. 4 am'd by ch. 549 of 1896; subd. 17 added by ch. 265 of 1899 and former subd. 17 made subd.

18 by same act.

Subd. 4 claimed to be am'd by ch. 625 of 1905.

People v. Cleary, 13 Misc. 552; People v. Pillion, 78 Hun, 75.

People v. Hochstein, 76 App. Div. 25, rev'd 36 Misc. 563.

§ 411. Illegal voting.

Any person who:

1. Knowingly votes or offers or attempts to vote at any election, or town meeting, when not qualified; or

2. Procures, aids, assists, counsels or advises any person to go or come into any town, ward or election district, for the purpose of voting at any election, or town meeting, knowing that such person is not qualified; or

3. Votes or offers or attempts to vote at an election, or town meeting more than once; or votes or offers or attempts to vote at an election, or town meeting under any other name than his own;

or votes or offers or attempts to vote at an election, or town meeting in an election district or from a place where he does not reside; or

4. Procures, aids, assists, commands or advises another to vote or offer or attempts to vote at an election, or town meeting, knowing that such person is not qualified to vote thereat; or

5. Being an inhabitant of another state or county, votes or offers or attempts to vote at an election, or town meeting in this state or permits, aids, assists, abets, procures, commands or advises another to commit or attempt any act named in this section is guilty of felony, punishable by imprisonment in a state prison not more than five years.

6. An offer or attempt under this section shall be deemed to be the doing of any act made necessary by the election law preliminary to the delivery of a ballot to an elector or the deposit of the ballot in the ballot box.

Former § 41l repealed by ch. 371 of 1901.

Formerly § 41m; changed to § 41l and am'd by ch. 371 of 1901, and ch. 625 of 1905.

People ex rel. McShane v. Hagen, 48 App. Div. 208.

§ 41m. False returns.

An inspector or poll clerk of an election or town meeting, who intentionally makes, or attempts to make, a false canvass of the ballots cast thereat, or any false statement of the result of a canvass, though not signed by a majority of the inspectors, or any person who induces or attempts to induce any such inspector or clerk so to do, is guilty of a felony.

This was formerly § 41n, and was made § 41m by ch. 371 of 1901.

Former § 41n was am'd by ch. 693 of 1892.

§ 41n. Furnishing money or entertainment to induce attendance at polls.

Any person who directly or indirectly by himself or through any other person in connection with or in respect of any election:

1. Gives or provides, or causes to be given or provided, or shall pay for wholly or in part, any meat, drink, tobacco, refreshment or provision, to or for any person, other than as part of the traveling expenses of candidates, political agents, committees and public speakers, or

2. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration, for any other purpose than the following matters and services at their reasonable, bona fide and customary value is guilty of a misdemeanor. Rent of halls and compensation of speakers, music and fireworks for public meetings, and expenses of advertising the same, together with the usual and minor expenses incident thereto. The preparation, printing and publication of posters, lithographs, banners, notices and literary material; the compensation of agents to supervise and prepare articles and advertisements in the newspapers, to examine questions of public interest bearing on the election, and report on the same; the pay of newspapers for advertisements, pictures, reading matter and additional circulation, the preparation and circulation of circular letters, pamphlets and literature bearing on the election. Rent of offices and club rooms, compensation of such clerks and agents as shall be required to manage the necessary and reasonable business of the election and of attorneys at law for actual legal services rendered in connection with the election; the preparation of lists of voters, payment of necessary personal expenses by a candidate. The reasonable traveling expenses of the committeemen, agents, clerks and speakers, postage, express, telegrams and telephones; the expenses of preparing, circulating and filing a petition for nomination; compensation of poll workers or watchers, and food for the same, and election officers, hiring of carriages for conveying electors to the polls not exceeding three carriages for each election district in a city and not exceeding six carriages in any other election district; and the actual necessary railroad traveling expenses for transportation of voters to and from their places of residence for the purpose of voting.

This was formerly § 41o, and was made § 41n, ch. 371 of 1901.

Former § 41o, now this section, was am'd by ch. 693 of 1892, ch. 886 of 1895, ch. 508 of 1906, and ch. 398 of 1907.

Smith v. Babcock, 3 App. Div. 9; People ex rel. Perkins v. Morse, 187 N. Y. 410, affg. 113 App. Div. 329.

§ 41o. Giving consideration for franchise.

Any person who directly or indirectly, by himself or through any other person:

1. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to or for

any voter, or to or for any other person, to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election for any particular person or persons, or for or against any particular proposition submitted to voters, or to induce such voter to come to the polls or remain away from the polls at such election, or to induce such voter or other person to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such voter or other person having voted or refrained from voting or having voted or refrained from voting for or against any particular person or for or against any proposition submitted to voters, or having come to the polls or remained away from the polls at such election, or having placed or caused to be placed or refrained from placing or causing to be placed his or any other name upon the registry of voters: or

2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election, for or against any particular person or persons, or for or against any proposition submitted to voters, or to induce any voter or other person to place or cause to be placed or refrain from placing or causing to be placed his or any other name upon a registry of voters; or

3. Gives, offers or promises any office, place, employment or valuable thing as an inducement for any voter or other person to procure or aid in procuring either a large or a small vote, plurality or majority at any election district or other political division of the state, for a candidate or candidates to be voted for at an election; or to cause a larger or smaller vote, plurality or majority to be cast or given for any candidate or candidates in one such district or political division than in another; or

4. Makes any gift, loan, promise, offer, procurement or agreement as aforesaid to, for or with any person to induce such person to procure or endeavor to procure the election of any person or the vote of any voter at any election; or

5. Procures or engages or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement or agreement the election of any person, or the vote of any voter, at such election; or

6. Advances or pays or causes to be paid, any money or other valuable thing, to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or knowingly pays or causes to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part expended in bribery at any election, is guilty of a felony, punishable by imprisonment for not more than five years, and in addition forfeits any office to which he may have been elected at the election with reference to which such offense was committed, and becomes incapable of holding any public office under the constitution and laws of the state for a period of five years after such conviction.

Formerly § 41p; changed to § 41o and am'd by ch. 371 of 1901.

Former § 41p, now 41o, was am'd by ch. 693 of 1892, ch. 714 of 1894, and ch. 625 of 1905.

Van Ingen v. Star Co., 1 App. Div. 431.

§ 41p. Receiving consideration for franchise.

Any person who, directly or indirectly, by himself or through any other person:

1. Receives, agrees or contracts for, before or during an election, any money, gift, loan or other valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from registering as a voter, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or for refraining or agreeing to refrain from voting for or against any particular person or persons at any election, or for or against any proposition submitted to voters at such election; or

2. Receives any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such an election, or having registered or refrained from registering as a voter, or on account of himself or any other person having voted or refrained from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or having registered or refrained from registering as a voter, or on account of having induced any other person to vote or refrain from voting for or against any particular person or persons at such election, or for or against any proposition submitted to voters at such election, is guilty of a felony, and in addition shall be excluded from the right of suffrage for five years after such conviction, and the county clerk of the county in which such person is convicted shall transmit a certified copy of the record of conviction to the clerk of each county of the state, within ten days thereafter, which copy shall be filed in his office by each of said clerks.

Formerly § 41q; changed to § 41p and am'd by ch. 371 of 1901.

Former § 41q, now § 41p, was am'd by ch. 693 of 1892, ch. 714 of 1894, and ch. 625 of 1905.

§ 41q. Testimony upon prosecution.

A person offending against any section of this title is a competent witness against another person so offending and may be compelled to attend and testify on any trial, hearing or proceeding or investigation in the same manner as any other person. The testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person testifying. Any such person testifying shall not thereafter be liable to indictment, prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

Formerly § 41r; changed to § 41q and am'd by ch. 371 of 1901.

Former § 41r, now § 41q, was am'd by ch. 693 of 1892 and ch. 602 of 1898. People v. Lewis, 14 Misc. 266.

§ 41r. Bribery or intimidation of elector in military service or United States.

Any person who, directly or indirectly, by bribery, menace or other corrupt means, controls or attempts to control an elector of

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this state enlisted in the military service of the United States, in the exercise of his rights under the election law, or annoys, injures or punishes him for the manner in which he exercises such right, is guilty of a misdemeanor for which he may be tried at any future time when he may be found within this state; and upon conviction thereof shall thereafter be ineligible to any office therein.

§ 41a changed to § 41r by ch. 371 of 1901.

Former § 41a, now § 41r, was am'd by ch. 693 of 1892.

§ 41a. Duress and intimidation of voters.

Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election or to vote or refrain from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed, his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or

3. Being an employer pays his employes the salary or wages due in "pay envelopes," upon which there is written or printed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employes, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his employes are engaged in labor, any hand bill or placard containing any threat, notice or information that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employes reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employes, is guilty of a misdemeanor, and if a corporation shall in addition forfeit its charter.

§ 41t changed to § 41s by ch. 371 of 1901.

Former § 41t, now § 41s, am'd by ch. 693 of 1892 and ch. 714 of 1894.

People v. Hochstein, 36 Misc. 563.

§ 41t. Conspiring to promote or prevent election.

Any two or more persons who conspire to promote or prevent the election of any person or persons to a public office by the use of any means which are prohibited by law, shall be punishable by imprisonment for not more than one year: provided, any act besides such arangement be done to effect the object thereof by one or more of the parties to such conspiracy.

This section was formerly § 41u, and was added by ch. 714 of 1894, and made § 41t by ch. 371 of 1901.

Am'd by ch. 625 of 1905.

§ 41u. Political assessments.

Any person who:

1. Being an officer or employe of the state, or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employe of the state or a political subdivision thereof, to pay or promise to pay any political assessments; or
2. Being an officer or employe of the state, or of a political subdivision thereof, directly or indirectly, gives, pays or hands over to any other such officer or employe any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employe to pay or contribute any money or other valuable thing for any such purpose or object; or
3. Being such an officer or employe and having charge or control of any building, office or room occupied for any purpose of the state or of a political subdivision thereof, consents that any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or
4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment;
5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that the same shall be sent or presented to or collected of any such officer or employe; or
6. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of, any such officer or employe,

Is guilty of a misdemeanor.

This was once § 41u, was made § 41v by ch. 714 of 1894, and changed back to § 41u by ch. 371 of 1901.
Am'd by ch. 693 of 1892.

§ 41v. Corrupt use of position or authority.

Any person who:

1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or
2. Being a public officer or employe of the state or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employe, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employe, or on account of the vote or political action of such officer or employe; or

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3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof ; or

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein or exemption from removal or discharge therefrom, is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both.

This was formerly § 41v, and was made § 41w by ch. 714 of 1894, and was changed again to § 41v by ch. 371 of 1901.

§ 41w. Failure to file candidate's statement of expenses.

Every candidate who is voted for at any public election held within this state, shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire state, or any division or district thereof greater than a county, shall file their statements in the office of secretary of state. The candidates for town, village and city offices, excepting the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs. Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor, and shall also forfeit his office.

This was formerly § 41w, and was made § 41x by ch. 714 of 1894, and changed again to § 41w by ch. 371 of 1901.

Before this section was changed from 41x to 41w by ch. 371 of 1901 there were two § 41x, and ch. 371 of 1901 does not specify which was made 41w.

Am'd by ch. 693 of 1892.

Unconstitutional. Stryker v. Churchill, 39 Misc. 578.

§ 41x. Procuring fraudulent certificates in order to vote.

Any person who knowingly and willfully procures from any court, judge, clerk or other officer, a certificate of naturalization, which has been allowed, issued, signed or sealed in violation of the laws of the

§§ 41y-41z(b) THE PENAL CODE.

United States or of this state, with intent to enable himself or any other person to vote at any election, when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, is guilty of a felony.

See note to § 41x that before the passage of ch. 371 of 1901 there were two § 41x, but that said ch. 371 of 1901 does not specify which was made § 41w.

Added by ch. 692 of 1893.

§ 41y. Presenting fraudulent certificates to registry boards to procure registration.

A person who knowingly and willfully presents to any board of officers, for the purpose of having himself or any other person placed upon any list or registry of voters, or to any board of officers for the purpose of enabling himself or any other person to vote at any election, any certificate of naturalization which has been allowed or issued by or procured from any judicial officer, clerk of a court, or other ministerial officer of a court, by any false statement, oath or representation, or in violation of the laws of the United States or of this state, with intent to enable any person to vote at any election, when such person is not entitled by the laws of the United States to become a citizen, or of this state, to exercise the elective franchise, is guilty of a felony.

Added by ch. 692 of 1893.

§ 41z. (a) Soliciting from candidates.

Any person who solicits from a candidate for an elective office money or other property, or who seeks to induce such candidate who has been placed in nomination to purchase any ticket, card or evidence of admission to any ball, picnic, fair or entertainment of any kind, is guilty of a misdemeanor; but this section shall not apply to a request for a contribution of money by an authorized representative of the political party, organization or association to which such candidate belongs.

(b) Judicial candidates not to contribute.

No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor

CRIMES AGAINST ELECTIVE FRANCHISE. §§ 41x(c)-41xx

shall any contribution be solicited of him; but a candidate for a judicial office may make such legal expenditures other than contributions, as are authorized by section forty-one-n of this act.

Added by ch. 155 of 1896, and am'd by ch. 503 of 1906.

(c) Limitation of amounts to be expended by candidates.

The total amount expended by a candidate for a public office, voted for at an election, by the qualified electors of the state or any political subdivision thereof, for any of the purposes specified in section forty-one-n of this act, for contributions to political committees, as that term is defined in section two hundred of the election law, or for any purpose tending in any way, directly or indirectly, to promote, or aid in securing, his nomination and election shall not exceed the amounts specified herein. By a candidate for governor, the sum of ten thousand dollars; by a candidate for any other elective state office, other than a judicial office, the sum of six thousand dollars; by a candidate for the office of representative in congress or presidential elector, the sum of four thousand dollars; by a candidate for the office of state senator, the sum of two thousand dollars; by a candidate for the office of member of assembly, the sum of one thousand dollars; by a candidate for any other public office to be voted for by the qualified electors of a county, city, town or village, or any part thereof, if the total number of votes cast therein for all candidates for the office of governor at the last preceding state election, shall be five thousand or less, the sum of five hundred dollars; if the total number of votes cast therein at such last preceding state election be in excess of five thousand, the sum of three dollars for each one hundred votes in excess of such number may be added to the amounts above specified. Any candidate for a public office who shall expend for the purposes above mentioned an amount in excess of the sum herein specified shall be guilty of a misdemeanor.

Added by ch. 584 of 1907.

§ 41xx. Penalty.

Any person convicted of a misdemeanor under this title shall for a first offense be punished by imprisonment for not more

than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this title for a second or subsequent offense shall be guilty of a felony.

Added by ch. 371 of 1901, and am'd by ch. 625 of 1905 and ch. 503 of 1906.

§ 41zzz. Certain expressions interpreted.

The words "election" or "town meeting," as used in any of the foregoing sections of title five excepting section forty-one, shall be deemed to apply to and include all general and special elections, municipal elections and town meetings.

Added by ch. 544 of 1907.

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CRIMES AGAINST EXECUTIVE POWER. §§ 42-44

TITLE VI.

Of Crimes by and against the Executive Power of the State.

- Sec. 42. Acting in a public office without having qualified.
43. Acts of officer de facto, not affected.
44. Giving or offering bribes.
45. Asking or receiving bribes.
46. Attempting to prevent officers from performing duty.
47. Resisting officers.
48. Taking unlawful fees.
- 48a. Comptroller not to be interested in tax sales.
- 48b. Prison officers not to be interested in prison contracts.
- 48c. Appraiser taking fee or reward.
49. Asking or taking reward for omitting or delaying official acts.
50. Taking fees for services not rendered.
51. Taking unlawful reward for services in extradition of fugitives.
52. Corrupt bargain for appointments, etc.
53. Same.
54. Selling right to official powers.
55. Such appointment avoided by conviction.
56. Intrusion into public office.
57. Officer refusing to surrender to successor.
58. Administrative officers.

§ 42. Acting in a public office without having qualified.

A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor, as prescribed by law.

Am'd by ch. 692 of 1893.

See §§ 45, 53, 54, 72, 701 and 708, post.

People v. Meakim et al., 133 N. Y. 221; People v. Collins, 7 Johns. 549;

Foot v. Stiles e. al., 57 N. Y. 399; People v. Stevens, 5 Hill, 617; Mc Kinstry v. Tanner, 9 Johns. 135; Weeks v. Ellis, 2 Barb. 321.

§ 43. Acts of officer de facto, not affected.

The last section must not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Who is an officer de facto. Weeks v. Ellis, 2 Barb. 320; In the Matter of Kendall, 85 N. Y. 302; People ex rel. Woods v. Crissey, 91 N. Y. 635; Matter of Quinn, 152 N. Y. 89; Williams v. Boynton, 147 N. Y. 426; 71 Hun 309; People ex rel. Sinkler v. Terry, 108 N. Y. 1; Curtin v. Barton, 130 N. Y. 505.

Acts of officer de facto valid until forfeiture judicially declared. Foot v. Stiles, 57 N. Y. 399; People v. Stevens, 5 Hill, 616; Hand v. Deady, 79 Hun, 74.

§ 44. Giving or offering bribes.

A person who gives or offers a bribe to any executive officer of this state with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or by both.

People v. Sharp, 107 N. Y. 427, 439.

§ 45. Asking or receiving bribes.

An executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state.

People v. Meakim, 133 N. Y. 221.

§ 46. Attempting to prevent officers from performing duty.

A person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

See §§ 61-63, 127, post.

People v. Palmer, 5 N. Y. Cr. Rep. 101; 48 Hun, 397; People v. Hall, 31 Hun, 404; 2 N. Y. Cr. Rep. 134; Smith v. Botens, 36 N. Y. St. Rep. 54. People v. Hochstein, 36 Misc. 563.

§ 47. Resisting officers.

A person who knowingly resists by the use of force or violence, any executive officer, in the performance of his duty, is guilty of a misdemeanor.

See § 124, post.

Kline v. Hibbard, 80 Hun, 52.

People v. Hochstein, 36 Misc. 563.

§ 48. Taking unlawful fees.

A public officer or a deputy, clerk, assistant or other subordinate of a public officer, or any person appointed or employed by or in the office of a public officer, who shall, in any manner act for or in behalf of any such officer, who asks or receives, or consents or agrees to receive, any emolument, gratuity or reward, or any promise of emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, except such as may be authorized by law for doing or omitting to do any official act, or for performing or omitting to perform, or for having performed or omitted to perform any act whatsoever directly or indirectly related to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment or his actual relation to the matter, shall be guilty of a felony, punishable by imprisonment for not more than ten years or by a fine of not more than four thousand dollars, or both.

Am'd by ch. 336 of 1890.

See § 557, post, also § 1122, Code Civ. Pr.

Matter of Jensen, 28 Misc. 379; Crofut v. Brandt, 18 Abb. Pr. (N. S.) 128; Suprs., etc. v. Briggs, 2 Den. 41; People v. Whaley, 6 Cow. 661; Adams v. Stevens, 26 Wend. 451; Parker v. Newman, 1 Hill, 87; Stevens v. Adams, 22 Wend. 57; Lynch v. Meyers, 8 Daly, 256.

CRIMES AGAINST EXECUTIVE POWER. §§ 48a-50

§ 48a. Comptroller not to be interested in tax sales.

The comptroller, or any person employed in his office, who shall be directly or indirectly interested in any tax sale made by such comptroller, or in the title acquired by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes or on the cancellation of any tax sale; or any person who shall pay or give to the state comptroller, or to any employe in his office, any compensation, reward or promise thereof for any service or services performed or to be performed in regard to such sale, redemption, cancellation or such tax title, is guilty of a misdemeanor. A sale in violation of this section is void.

Added by ch. 692 of 1893.

§ 48b. Prison officers not to be interested in prison contracts.

A superintendent of state prisons, or agent, warden or other officer, keeper or guard, employed at either of the prisons, who

1. Shall be directly or indirectly interested in any contract, purchase or sale, for, by, or on account of such prison; or
2. Accepts a present from a contractor or contractor's agent, directly or indirectly, or employs the labor of a convict or another person employed in such prison on any work for the private benefit of such superintendent, officer, keeper or guard, is guilty of a misdemeanor, except that the agent and warden shall be entitled to employ prisoners for necessary household service.

Added by ch. 692 of 1893.

§ 48c. Appraiser taking fee or reward.

An appraiser appointed by virtue of the taxable transfers law, who takes any fee or reward from an executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay such tax, or any portion thereof, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 49. Asking or taking reward for omitting or delaying official acts.

An executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

§ 50. Taking fees for services not rendered.

An executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

See § 48, ante.

Parker v. Newland, 1 Hill, 87; People v. Whaley, 6 Cow. 661; Crofut v. Brandt, 18 Abb. Pr. (N. S.) 128; Lynch v. Meyers, 8 Daly, 256; Wendell v. Lewis, 8 Paige, 618.

§ 51. Taking unlawful reward for services in extradition of fugitives.

An officer of this state who asks or receives any fee or compensation of any kind for any service rendered or expense incurred in procuring from the governor of this state a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice; or for any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this state or for detaining him therein, except upon an employment by the governor of this state is guilty of a misdemeanor.

Am'd by ch. 884 of 1882.

See §§ 836-837, Code Crim. Pro.

People ex rel. Gardener v. Board, etc., 184 N. Y. 1; 45 N. Y. St. Rep. 311, aff'g 56 Hun, 20; 29 N. Y. St. Rep. 57, rev'g 7 N. Y. St. Rep. 987; 2 N. Y. Supp. 353.

§ 52. Corrupt bargain for appointments, etc.

A person who gives or offers to give, any gratuity or reward, in consideration that himself or any other person shall be appointed to a public office, or to a clerkship, deputation, or other subordinate position, in such an office, or shall be permitted to exercise, perform, or discharge any prerogatives or duties, or to receive any emoluments, of such an office, is guilty of a misdemeanor.

Deyoe v. Woodworth et al., 144 N. Y. 450; Becker v. Ten Eyck, 6 Paige, 68;

Mott v. Robins, 1 Hill, 21; Gray v. Hook, 4 N. Y. 449; Tappan v. Brown, 9 Wend. 175; Robinson v. Kalbfleisch, 5 T. & C. 212.

§ 53. Same.

A person who asks or receives, or agrees to receive, any gratuity or reward, or any promise thereof, for appointing another person, or procuring for another person an appointment, to a public office or to a clerkship, deputation, or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.

Deyoe v. Woodworth et al., 144 N. Y. 450; Tappan v. Brown, 9 Wend. 175;

Gray v. Hook, 4 N. Y. 449; People v. Meakim et al., 133 N. Y. 221.

§ 54. Selling right to official powers.

A public officer who, for any reward, consideration or gratuity, paid or agreed to be paid, directly or indirectly, grants to another the right or authority to discharge any functions of his office, or permits another to make appointments or perform any of its duties, is guilty of a misdemeanor, and a conviction for the same forfeits his office and disqualifies him forever from holding any office whatever under this state.

See cases cited under § 52.

People v. Meakim et al., 133 N. Y. 221.

§ 55. Such appointment avoided by conviction.

A grant, appointment, or deputation, made contrary to the provisions of either of the last two sections, is avoided and annulled by a conviction for the violation of either of those sections, in

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respect to such grant, appointment, or deputation; but any official act done before conviction, is unaffected by the conviction.

§ 56. Intrusion into public office.

A person who willfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, willfully exercises any of the functions of his office, after his right to do so has ceased, is guilty of a misdemeanor.

See § 1498, Code Civ. Pro.

People v. Bates, 79 Hun, 584; Matter of Gray (subd. 2), 2 N. Y. Cr. Rep. 307.

§ 57. Officer refusing to surrender to successor.

A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers, appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor.

Matter of Davis, 19 How. 323; Matter of Whiting, 2 Barb. 513; People v. Stevens, 5 Hill, 616; Cobee v. Davis, 8 How. Pr. 387; Welch v. Cook, 7 How. Pr. 173-282; In re Bartlett, 9 How. Pr. 414; People v. Dikeman, 7 How. Pr. 124; Matter of Baker, 11 How. 418; Conover's case, 5 Abb. 78; Devlin's case, 5 Abb. 281.

§ 58. Administrative officers.

The various provisions of this chapter which relate to executive officers apply to administrative officers, in the same manner as if administrative and executive officers were both mentioned.

TITLE VII.

Of Crimes against the Legislative Power.

- Sec. 59. Preventing the meeting or organization of either branch of the legislature.**
60. Disturbing the legislature while in session.
 61. Compelling adjournment.
 62. Intimidating a member of the legislature.
 63. Compelling either house to perform or omit any official act.
 64. Altering draft of bill.
 65. Altering engrossed copy.
 66. Bribery of members of the legislature.
 67. Receiving bribes by members of the legislature.
 68. Witnesses refusing to attend before the legislature or legislative committees.
 69. Refusing to testify.
 70. Members of the legislature liable to forfeiture of office.

§ 59. Preventing the meeting or organization of either branch of the legislature.

A person who willfully and by force or fraud prevents the legislature of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in a state prison not less than five years nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both.

§ 60. Disturbing the legislature while in session.

A person who willfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

§ 61. Compelling adjournment.

A person who willfully and by force or fraud compels or attempts to compel the legislature of this state, or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in a state prison not less than five nor more than ten years, or by fine of not less than five hundred dollars, nor more than two thousand dollars, or by both.

§ 62. Intimidating a member of the legislature.

A person who willfully, by intimidation or otherwise, prevents any member of the legislature of this state, from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

See §§ 46 and 127, Penal Code.

§ 63. Compelling either house to perform or omit any official act.

A person who willfully compels or attempts to compel either of the houses composing the legislature of this state to ~~pass, amend~~.

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or reject any bill, or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in a state prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both.

§ 64. Altering draft of bill.

A person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

§ 65. Altering engrossed copy.

A person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislature of this state, with intent to procure it to be approved by the governor or certified by the secretary of state, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of felony.

§ 66. Bribery of members of the legislature.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a member of the legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence a member to give or withhold his vote, or to absent himself from the house of which he is a member, or from any committee thereof, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

See N. Y. Const., art. 13, §§ 2, 3, 4.

People v. Sharp, 107 N. Y. 427, 439.

§ 67. Receiving bribes by members of the legislature.

A member of either of the houses composing the legislature of this state, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

See art. 13, §§ 2, 3 and 4, N. Y. Const.

Marshall v. Balt. & Ohio R. Co., 16 How. (U. S.) 314.

§ 68. Witnesses refusing to attend before the legislature or legislative committees.

A person who, being duly summoned to attend as a witness before either house of the legislature or any committee thereof,

authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

People v. Sharp, 107 N. Y. 427; 5 N. Y. Cr. Rep. 580; 12 N. Y. St. Rep. 217, rev'd 45 Hun, 491; 10 N. Y. St. Rep. 522; People v. Learned, 5 Hun, 626; Wilckens v. Willet, 1 Keyes, 521; 4 Abb. App. Dec. 596; People ex rel. McDonald v. Keeler, 99 N. Y. 463.

§ 69. Refusing to testify.

A person who being present before either house of the legislature or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

People v. Sharp, 107 N. Y. 427; 5 N. Y. Cr. Rep. 580; 12 N. Y. St. Rep. 217, rev'd 45 Hun, 491; 10 N. Y. St. Rep. 522; People v. Keeler, 99 N. Y. 474; 8 N. Y. Cr. Rep. 341, rev'd 32 Hun, 589; 2 N. Y. Cr. Rep. 141; People ex rel. Sabold v. Webb, 23 N. Y. St. Rep. 324; 5 N. Y. Supp. 855.

§ 70. Members of the legislature liable to forfeiture of office.

The conviction of a member of the legislature of either of the crimes defined in this chapter, involves as a consequence in addition to the punishment prescribed by this Code, a forfeiture of his office; and disqualifies him from ever afterwards holding any office under this state.

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TITLE VIII.

Of Crimes against Public Justice.

- Chap. I. Bribery and corruption.
II. Rescues.
III. Escapes and aiding therein.
IV. Forging, stealing, mutilating and falsifying judicial and public records and documents.
V. Perjury and subornation of perjury.
VI. Falsifying evidence.
VII. Other offenses against public justice.
VIII. Conspiracy.

CHAPTER I.

Bribery and Corruption.

- Sec. 71. Bribery of a judicial officer.
72. Officer accepting bribe.
73. Juror, etc., promising verdict.
74. Juror, etc., accepting bribes.
75. Embracery.
76. Misconduct of officers at drawing of jurors.
77. Misconduct of officer having charge of juries.
78. Bribery public officers.
79. Offender a competent witness, etc.
80. Bribery of witnesses.
81. Definition of "jurors."

§ 71. Bribery of a judicial officer.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a judicial officer, juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereupon, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

People v. Winant, 24 Misc. 363; People v. Sharp, 107 N. Y. 427; 5 N. Y. Cr. Rep. 580; 12 N. Y. St. Rep. 217, rev'd 45 Hun, 491; 10 N. Y. St. Rep. 522; Klugman's case, 49 How. 484; People v. Jaehne, 103 N. Y. 182, 190.

72. Officer accepting bribe.

A judicial officer, a person who executes any of the functions of a public office not designated in titles VI and VII of this Code, or a person employed by or acting for the state, or for any public officer in the business of the state, who asks, receives, or agrees to receive a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, judgment, action, decision, or other official proceeding, shall be influenced thereby, or that he will do or omit any act or proceeding, or in any way neglect or violate any official duty, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both.

A conviction also forfeits any office held by the offender, and forever disqualifies him from holding any public office under the state.

People v. Meakim et al., 133 N. Y. 221; People v. Richmond, 5 N. Y. Cr. Rep. 97; People v. Jaehne, 103 N. Y. 182; 4 N. Y. Cr. Rep. 478; People v. O'Neill, 109 N. Y. 251; 5 N. Y. Cr. Rep. 302; 48 Hun, 36; People v. Winant, 24 Misc. 363; Jaehne v. People, 6 N. Y. Cr. Rep. 237; People v. Willis, 24 Misc. 550; People v. Sharp, 107 N. Y. 427; 5 N. Y. Cr. Rep. 580; 12 N. Y. St. Rep. 217, rev'd 45 Hun, 491; 10 N. Y. St. Rep. 522; People v. Jackson, 47 Misc. 60.

"Value of any kind." People ex rel. Dickinson v. Van de Carr, 87 App. Div. 386.

§ 73. Juror, etc., promising verdict.

A juror, or a person drawn or summoned to attend as a juror, or a person chosen arbitrator, or appointed referee, who either,

1. Makes any promise or agreement to give a verdict, judgment, report, award, or decision, for or against any party; or

2. Willfully receives any communication, book, paper instrument, or information, relating to a cause or matter pending before him, except according to the regular course of proceeding upon the trial or hearing of that cause or matter;

Is guilty of a misdemeanor.

See § 1122, Code Civ. Pro.

People ex rel. Munsell v. Ct. O. & T., 101 N. Y. 245; 4 N. Y. Cr. Rep. 70, aff'd 36 Hun, 277; 3 N. Y. Cr. Rep. 209.

§ 74. Juror, etc., accepting bribes.

A juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, controversy, or proceeding, who asks, receives, or agrees to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment or decision, shall be influenced thereby, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both.

See Code Civ. Pro., § 1193.

People v. Sharp, 107 N. Y. 427; 5 N. Y. Cr. Rep. 580; 12 N. Y. St. Rep. 217, rev'd 45 Hun, 491; 10 N. Y. St. Rep. 522.

§ 75. Embracery.

A person who influences or attempts to influence improperly, a juror in a civil or criminal action or proceeding, or one drawn or summoned to attend as such a juror, or one chosen an arbitrator, or appointed a referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending, or about to be brought before him, in any case, or in any manner not included in the last two sections, is guilty of a misdemeanor.

Code Civ. Pro., § 1122.

People v. Sellick, 4 N. Y. Cr. Rep. 328; Bergh's case, 16 Abb. Pr. (N. S.) 266; Gibbs v. Dewey, 5 Cow. 503; Turner v. Beardsley, 19 Wend. 348; Klugman's case, 49 How. Pr. 484.

§ 76. Misconduct of officers at drawing of jurors and the formation of a jury.

A person authorized by law to assist at the drawing or impaneling of grand or trial jurors to attend a court, or a term of a court, or to try any cause or issue, or to assist in the formation of a jury, who either

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1. Designedly puts, or consents to the putting, upon a list of jurors as having been drawn, any name which was not lawfully drawn for that purpose; or
2. Designedly omits to place on such a list any name which was lawfully drawn; or
3. Designedly signs or certifies a list of such jurors as having been drawn which was not lawfully drawn; or
4. Designedly withdraws from the box, or other receptacle for the ballots containing the names of such jurors, any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omits to place in such box or receptacle any name lawfully drawn or designated, or places in such box or receptacle a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or
5. In the drawing of such jurors, does any act which is unfair, partial, or improper in any other respect; or
6. Who violates any of the provisions of sections eleven hundred and sixty-three, eleven hundred and sixty-four, or eleven hundred and sixty-five of the code of civil procedure;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1905.

See § 1122, Code Civ. Pro.

§ 77. Misconduct of officer having charge of juries.

An officer to whose charge any juror is committed by a court or magistrate, who negligently or willfully permits them, or any of them, without leave of the court or magistrate,

1. To receive any communication from any person;
2. To make any communication to any person;
3. To obtain or receive any book or paper, or refreshment; or,
4. To leave the jury room.

Is guilty of a misdemeanor.

§ 78. Bribing public officers.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a person executing any of the functions of a public office, other than one of the officers or persons designated in title VI, title VII, and section 71 of title VIII of this Code, with intent to influence him in respect to any act, decision, vote, or other proceeding, in the exercise of his powers or functions, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

See § 418, post.

People v. Richmond, 5 N. Y. Cr. Rep. 97; People v. Sharp, 107 N. Y. 427; 5 N. Y. Cr. Rep. 580; 12 N. Y. St. Rep. 217, rev'd 45 Hun, 491; 10 N. Y. St. Rep. 522; People v. Jaehne, 103 N. Y. 191.

§ 79. Offender a competent witness, etc.

A person offending against any provision of any foregoing sections of this Code relating to bribery is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investiga-

tion, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

See § 712, post.

People v. Sharp, 107 N. Y. 427; 5 N. Y. Cr. Rep. 580; 12 N. Y. St. Rep. 217, rev'g 45 Hun, 491; 10 N. Y. St. Rep. 522; People v. Lewis, 14 Misc. 266; People v. Spencer, 66 Hun, 150; 21 N. Y. Supp. 33; 48 N. Y. St. Rep. 804.

§ 80. Bribery of witnesses.

A person who is, or is about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized to hear evidence or take testimony, who receives, or agrees or offers to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, is guilty of a felony.

See § 118, post.

§ 81. Definition of "jurors."

The word "juror" as used in this chapter includes a talesman, and extends to jurors in all courts whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

CHAPTER II.

Rescues.

Sec. 82. Rescue of prisoner.

83. Taking, etc., property in officer's custody.

§ 82. Rescue of prisoner.

A person who, by force or fraud, rescues a prisoner from lawful custody, or from an officer or other person having him in lawful custody, is guilty of a felony, if the prisoner was held upon a charge, commitment, arrest, conviction, or sentence of felony; and if the prisoner was held upon a charge, arrest, commitment, conviction, or sentence for misdemeanor, the rescuer is guilty of a misdemeanor.

See § 14, subd. 4, and § 587, Code Civ. Pro.

People v. Washburn, 10 Johns. 160; People v. Rathbun, 21 Wend. 506; People v. Rose, 12 Johns. 339; People v. Tompkins, 9 Johns. 70.

§ 83. Taking, etc., property in officer's custody.

A person who takes from the custody of an officer or other person, personal property, in charge of the latter, under any process of law, or who willfully injures or destroys such property, is guilty of a misdemeanor.

See § 14, subd. 4, and § 587, Code Civ. Pro.

People v. Booth, 52 Misc. 340.

CHAPTER III.

Escapes, and Aiding Therein.

- Sec. 84. Escaping prisoner may be recaptured.**
85. Prisoner escaping.
 86. Attempt to escape from state prison.
 87. Aiding escape.
 88. Same.
 89. Officer suffering escape.
 90. Id., forfeits office.
 91. Concealing escaped prisoner.
 92. Definition of prison.
 93. Definition of prisoner.

§ 84. Escaping prisoner may be recaptured.

A prisoner, in custody under sentence of imprisonment for any crime, who escapes from custody, may be recaptured and imprisoned for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape.

See § 186, Code Crim. Pro.

People v. Potter, 1 Park. 47; People v. Duell, 3 Johns. 449; Haggerty v. People, 53 N. Y. 478, rev'd 6 Lans. 332.

§ 85. Prisoner escaping.

A prisoner who, being confined in a prison, or being in lawful custody of an officer or other person, by force or fraud escapes from such prison or custody, is guilty of felony if such custody or confinement is upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor if such custody or confinement is upon a charge, arrest, commitment or conviction for a misdemeanor.

People v. Sickles, 26 App. Div. 472; People v. Johnson, 110 N. Y. 141, aff'd 46 Hun, 667; People v. Genet, 59 N. Y. 80; People v. Sharkey, 1 Hun, 300; McMonagle v. Conkey, 14 Hun, 326; Keenan v. O'Brien, 53 Hun, 30; 23 N. Y. St. Rep. 478; Matter of O'Byrne, 55 Hun, 488; 29 N. Y. St. Rep. 116; People v. Duell, 3 Johns. 449.

§ 86. Attempt to escape from State prison.

A prisoner confined in a state prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

§ 87. Aiding escape.

A person who, with intent to effect or facilitate the escape of a prisoner, whether the escape is effected or attempted or not, enters a prison, or conveys to a prisoner any information, or sends into a prison any disguise, instrument, weapon, or other thing, is guilty of felony, if the prisoner is held upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor, if the prisoner is held upon a charge, arrest, commitment, or conviction for a misdemeanor.

People v. Tompkins, 9 Johns. 70; People v. Rose, 12 Johns. 839; Westbrook v. N. Y. Sun Assn., 32 Misc. 87.
What is not aiding an escape. Westbrook v. N. Y. Sun Assn., 58 App. Div. 562.

Attempt. People v. Buckley, 91 App. Div. 586.

ESCAPES, AND AIDING THEREIN. §§ 88-93

§ 88. Same.

A person who aids or assists a prisoner in escaping, or attempting to escape, from the lawful custody of a sheriff, or other officer or person, is guilty of a misdemeanor, if the prisoner is held under arrest, commitment, or conviction for a misdemeanor, or upon a charge thereof; and of a felony if the prisoner is held under an arrest, commitment, or conviction for a felony, or upon a charge thereof.

People v. Washburn, 10 Johns. 160; People v. Tompkins, 9 Johns. 70; People v. Rose, 12 Johns. 339.

§ 89. Officer suffering escape.

A sheriff, or other officer or person, who allows a prisoner, lawfully in his custody, in any action or proceeding, civil or criminal, or in any prison under his charge or control, to escape or go at large, except as permitted by law, or connives at or assists such escape, or omits an act or duty whereby such escape is occasioned, or contributed to, or assisted, is

1. If he corruptly and willfully allows, connives at, or assists the escape, guilty of a felony;
2. In any other case, is guilty of a misdemeanor.

See §§ 58, 114-115, Penal Code.

Little v. Brown, 1 Wend. 398; Stone v. Woods, 5 Johns. 182; Kellogg v. Gilbert, 10 Johns. 220; Olmstead v. Raymond, 6 Johns. 62.

§ 90. Id., forfeits office.

An officer who is convicted of the offense specified in the first subdivision of the last section, forfeits his office, and is forever disqualified to hold any office, or place of trust, honor or profit, under the constitution or laws of this state.

People v. Duke, 19 Misc. 296.

§ 91. Concealing escaped prisoner.

A person who knowingly or willfully conceals, or harbors for the purpose of concealment, a person who has escaped or is escaping from custody, is guilty of a felony if the prisoner is held upon a charge or conviction of felony, and of a misdemeanor if the person is held upon a charge or conviction of misdemeanor.

§ 92. Definition of prison.

The term "prison," as used in this chapter, means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.

People v. Johnson, 110 N. Y. 134; 16 N. Y. St. Rep. 846, aff'g 48 Hun, 671; 27 Week. Dig. 519; 7 N. Y. Cr. Rep. 402; 13 N. Y. St. Rep. 48.

§ 93. Definition of prisoner.

The term "prisoner," as used in this chapter, means any person held in custody under process of law, or under lawful arrest.

CHAPTER IV.

Forging, Stealing, Mutilating and Falsifying Judicial and Public Records and Documents.

Sec. 94. Injury, etc., to public record.

95. Offering false or forged instruments to be filed or recorded,

§ 94. Injury, etc., to public record.

A person who, willfully and unlawfully removes, mutilates, destroys, conceals, or obliterates a record, map, book, paper, document, or other thing, filed or deposited in a public office, or with any public officer by authority of law, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

See §§ 114, 649, post.

People v. Peck, 138 N. Y. 397; 52 N. Y. St. Rep. 918, aff'd 67 Hun, 564; 22 N. Y. Supp. 576; 51 N. Y. St. Rep. 475; People v. Wise, 3 N. Y. Cr. Rep. 303; Ayres v. Covill, 18 Barb. 263; People v. Wise, 2 How. N. S. 92; People v. Mills, 178 N. Y. 274, aff'd 91 App. Div. 331.

§ 95. Offering false or forged instruments to be filed or recorded.

A person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of felony.

PERJURY AND SUBORNATION OF PERJURY. § 96

CHAPTER V.

Perjury and Subornation of Perjury.

- Sec. 96. Perjury.**
97. Irregularities in the mode of administering oaths.
98. Incompetency of witnesses no defense for perjury.
99. Witness' knowledge of materiality of his testimony not necessary.
100. Making of deposition, etc., when deemed complete.
101. Statement of that which one does not know to be true.
101a. Contradictory statements under oath.
102. Summary committal of witnesses who have committed perjury.
103. Witnesses necessary to prove the perjury, may be bound over to appear.
104. Documents necessary to prove such perjury may be detained.
105. Subornation of perjury defined.
106. Punishment of perjury and subornation.

§ 96. Perjury.

A person who swears or affirms that he will truly testify, declare, depose, or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed, is true, in an action, or a special proceeding, or upon any hearing, or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, willfully and knowingly testifies, declares, deposes, or certifies falsely, in any material matter, or states in his testimony, declaration, deposition, affidavit, or certificate, any material matter to be true which he knows to be false, is guilty of perjury.

For pleadings in indictments for perjury, see § 291, Code Crim. Pro. Swearing falsely in any form, perjury, § 851, Code Civ. Pro. See § 712, Penal Code. See §§ 842-849, Code Civ. Pro.

At trial, proof that oath was taken is necessary. *Case v. People*, 76 N. Y. 242; 6 Abb. N. C. 152.

Before whom oath must be taken. *Wood's case*, 4 C. H. Rec. 130; *Harris v. People*, 64 N. Y. 148; *Woods v. Ross*, 28 Daily Reg. 265; *Com. v. Edison*, 38 Alb. L. J. 837; *People v. Cook*, 8 N. Y. 67; *People v. Wendell*, 9 Wend. 235.

By whom falsity of oath must be proved. *Johnson's case*, 1 C. H. Rec. 21; *Merritt's case*, 4 C. H. Rec. 58; *People v. Evans*, 40 N. Y. 1; *People v. Stone*, 32 Hun, 41; *People v. Burden*, 9 Barb. 467.

What is not perjury. *Lambert v. People*, 76 N. Y. 220; 32 Am. Rep. 293; 6 Abb. N. C. 181; *People v. Christopher*, 4 Hun, 806; *Rouse v. Ross*, 1 Wend. 475; *Byrnes v. Byrnes*, 102 N. Y. 4; 4 E. R. 601; *Krauskopf v. Tallman*, 38 App. Div. 275.

What may constitute perjury. *People v. Southerland*, 81 N. Y. 1; *People v. Grimshaw*, 20 Week. Dig. 116; 2 N. Y. Cr. Rep. 390; 33 Hun, 507; *Wood v. People*, 59 N. Y. 117; *People v. Courtney*, 94 N. Y. 494; *Pendergrast case*, 3 C. H. Rec. 11; *People v. Burden*, 9 Barb. 467; *People v. Link*, 4 N. Y. Supp. 488; 6 N. Y. Cr. Rep. 185; *People v. Pearsall*, 46 How. Pr. 121. See 9 Alb. L. J. 144; *People v. Dishler*, 4 N. Y. Cr. Rep. 190.

Extends to oath required under law of another state taken in New York. *People v. Martin et al.*, 175 N. Y. 315, aff'd 77 App. Div. 306, rev'd 88 Misc. 67.

Intent. *Van Steenburgh v. Kortz*, 10 Johns. 167; *People v. McKinney*, 3 Park. 510; *Nathans v. Hope*, 100 N. Y. 615; *People v. Vatil*, 57 How. 81; 6 Abb. N. C. 206; *People v. Clements*, 11 N. Y. St. Rep. 384; *Newberger v. Webb*, 24 Hun, 347.

Rule as to proof to convict of *People v. Doody*, 172 N. Y. 165, aff'd 72 App. Div. 372.

When perjury may not be predicated. *O'Reilly v. People*, 86 N. Y. 154; 40 Am. Rep. 525; *People v. Christopher*, 4 Hun, 805; *People v. Ostrander*, 45 N. Y. St. Rep. 558; 64 Hun, 339; *Ward v. City of Brooklyn*, 32 App. Div. 434; *Kane v. City of Brooklyn*, 114 N. Y. 591; *People ex rel. Ostrander v. Chapin*, 105 N. Y. 308, aff'g 7 N. Y. St. Rep. 206; 26 Week. Dig. 320; *People v. Nolte*, 19 Misc. 674; 44 N. Y. Supp. 443.

Indictment for. *People v. Williams*, 149 N. Y. 1, aff'g 92 Hun, 357; *People v. Clements*, 107 N. Y. 206.

See *Foreman v. Union & Adv. Co.*, 83 Hun, 388; 64 N. Y. St. Rep. 742; 31 N. Y. Supp. 947; *People v. Sweetman*, 3 Park, 358; *People v. Bowe*, 84 Hun, 528; 3 N. Y. Cr. Rep. 159; 6 Abb. N. C. 181; *Bragle v. People*, 10 Abb. N. C. 300; 4 Law Bull. 34; *Chamberlain v. People*, 23 N. Y. 85; *People v. Sweetman*, 3 Park, 358; *Weed v. People*, 31 N. Y. 465; *Tuttle v. People*, 36 N. Y. 431; *People v. Travis*, 4 Park, 218; 1 *Shield*, 545; *Dempsey v. People*, 20 Hun, 281; *People v. Townsend*, 5 How. Pr. 315; *Rouse v. Ross*, 1 Wend. 475; *Geston v. People*, 4 Lans. 487; 61 Barb. 35; *People v. Dishler*, 38 Hun, 175; 4 N. Y. Cr. Rep. 188; *People v. Stone*, 2 N. Y. Cr. Rep. 445; *People v. Allen*, 9 N. Y. St. Rep. 627; *People v. Hayes*, 140 N. Y. 484; 56 N. Y. St. Rep. 456.

§ 97. Irregularities in the mode of administering oaths.

It is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner. The term "oath," includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

See §§ 842-849, 851, Code Civ. Pro., and 18 Alb. L. J. 413; 25 Alb. L. J. 326; 29 Alb. L. J. 344.

Case v. People, 76 N. Y. 242; *People v. Cook*, 8 N. Y. 84; 14 Barb. 287; *Campbell v. People*, 8 Wend. 636; *Van Steenburgh v. Kortz*, 10 Johns. 167; *People v. O'Reilly*, 86 N. Y. 154, rev'g 61 How. Pr. 3; *People v. Nolte*, 19 Misc. 675.

§ 98. Incompetency of witnesses no defense for perjury.

It is no defense to a prosecution for perjury that the defendant was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was permitted to give such testimony or make such deposition or certificate.

People v. Trumppour, 64 Hun, 347; 45 N. Y. St. Rep. 564; *Chamberlain v. People*, 23 N. Y. 85; *People v. Williams*, 92 Hun, 357; *People v. Bowe*, 84 Hun, 528; 3 N. Y. Cr. Rep. 159.

§ 99. Witness' knowledge of materiality of his testimony not necessary.

It is no defense to a prosecution for perjury that the defendant did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have affected such proceeding.

See cases under §§ 96-99.

People v. Grimshaw, 20 Week. Dig. 116; 2 N. Y. Cr. Rep. 390; *Rouse v. Ross*, 1 Wend. 475; *Van Steenburgh v. Kortz*, 10 Johns. 167; *Wood v. People*, 59 N. Y. 117.

PERJURY AND SUBORNATION OF PERJURY. §§ 100-105

§ 100. Making of deposition, etc., when deemed complete.

The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the defendant to any other person with intent that it be uttered or published as true.

People v. Williams, 149 N. Y. 3, aff'd 92 Hun, 857; People v. O'Reilly, 86 N. Y. 154, rev'd 61 How. Pr. 3; Kane v. City of Brooklyn, 114 N. Y. 591; 24 N. Y. St. Rep. 539; People v. Allen, 9 N. Y. St. Rep. 626.

§ 101. Statement of that which one does not know to be true.

An unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false.

People v. Dishler, 38 Hun, 176; 4 N. Y. Cr. Rep. 190; Hoermann v. Climax Cycle Co., 9 App. Div. 588; People v. McKinney, 3 Park. 510; Bennett v. Judson, 21 N. Y. 238.

§ 101a. Contradictory statements under oath.

In any prosecution for perjury the falsity of the testimony or statement set forth in the indictment shall be presumptively established by proof that the defendant has testified, declared, deposed or certified under oath to the contrary thereof in any other written testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed.

Added by ch. 324 of 1906.

§ 102. Summary committal of witnesses who have committed perjury.

Where it appears probable to a court of record that a person, who has testified before it in an action or proceeding in that court, has committed perjury in any testimony so given, the court may immediately commit him, by an order or process for that purpose, to prison, or take a recognizance, with sureties, for his appearing and answering to an indictment for perjury.

People v. Hayes, 140 N. Y. 497; Lindsay v. People, 67 Barb. 561.

§ 103. Witnesses necessary to prove the perjury, may be bound over to appear.

In a case specified in the last section, the court may bind over witnesses to establish the perjury, to appear at the proper court to testify before a grand jury, and also upon the trial, in case an indictment is found for the perjury. It must cause immediate notice of any such commitment or recognizance, with the names of the witnesses so bound over, to be given to the district attorney of the county.

People ex rel. Gardiner v. Olmstead, 25 Misc. 347; People v. Stone, 32 Hun, 41; 2 N. Y. Cr. Rep. 446.

§ 104. Documents necessary to prove such perjury may be detained.

In such a case, if a paper or document, produced by either party, is deemed by the court necessary to be used in the prosecution for the perjury, the court may detain the same, and direct it to be delivered to the district attorney.

§ 105. Subornation of perjury defined.

A person, who willfully procures or induces another to commit perjury, is guilty of subornation of perjury.

See § 291, Code Crim. Pro.

People v. Evans, 40 N. Y. 1; In re Eldridge, 82 N. Y. 161; 9 Week. Dig. 6; Stratton v. People, 81 N. Y. 629, aff'd 20 Hun, 288; McCoy v. Munro, 76 App. Div. 436.

§ 106. Punishment of perjury and subornation.

Perjury and subornation of perjury are each punishable as follows:

1. When the perjury is committed upon the trial of an indictment for felony, by imprisonment for a term not exceeding twenty years.
2. In any other case, by imprisonment for a term not exceeding ten years.

Am'd by ch. 662 of 1892.

People v. Hayes, 54 N. Y. St. Rep. 188.

CHAPTER VI.**Falsifying Evidence.**

- See.** 107. Offering false evidence.
108. Deceiving a witness.
109. Preparing false evidence.
110. Destroying evidence.
111. Preventing or dissuading witnesses from attending.
112. Inducing another to commit perjury.
113. Bribing witnesses.

§ 107. Offering false evidence.

A person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, offers or procures to be offered in evidence, or to be used on a motion, as genuine, a book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, is guilty of felony.

Am'd by ch. 378 of 1890.

People v. Levy, 16 Misc. 616.

§ 108. Deceiving a witness.

A person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, conducted by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

Matter of Eldridge, 82 N. Y. 161; 9 Week. Dig. 6.

§ 109. Preparing false evidence.

A person who fraudulently makes or prepares any false record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced in evidence, or on a motion, as genuine, upon any trial, hearing, investigation, inquiry, or other proceeding, authorized by law, is guilty of a felony.

Am'd by ch. 378 of 1890.

People v. Levy, 16 Misc. 616.

§ 110. Destroying evidence.

A person who, knowing that a book, paper, record, instrument in writing, or other matter or thing, is or may be required in evidence, or on a motion, upon any trial, hearing, inquiry, investigation, or other proceeding, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

Am'd by ch. 378 of 1890.

Colyer v. Colyer, 50 Hun, 424; 21 N. Y. St. Rep. 119; 3 N. Y. Supp. 311.

§ 111. Preventing or dissuading witnesses from attending.

A person who willfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the summons or subpoena, is guilty of a misdemeanor.

Morse v. Grimke, 18 Civ. Pro. Rep. 40; 27 N. Y. St. Rep. 266; 8 N. Y. Supp. 2.

§ 112. Inducing another to commit perjury.

A person who without giving, offering or promising a bribe, incites or attempts to procure another to commit perjury, or to give false testimony as a witness, though no perjury is committed or false testimony given, or to withhold true testimony, is guilty of a misdemeanor.

See notes under § 105, ante.

Stratton v. People, 80 N. Y. 629, aff'd 20 Hun, 288; McCoy v. Munro, 76 App. Div. 435.

§ 113. Bribing witnesses.

A person who gives or offers or promises to give, to any witness or persons about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony, or to withhold true testimony, is guilty of a felony.

See cases cited under § 80, ante.

OFFENSES AGAINST PUBLIC JUSTICE.

CHAPTER VII.

Other Offenses against Public Justice.

- Sec. 114. Injury to records and misappropriation by ministerial officers.
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160. Communications with convicts prohibited.
161. Neglect to return names of constables.
162. Falsely certifying, etc., as to deeds.

Sec. 163. Other false certificates.

164. Penalty for recording, etc., without acknowledgment.

165. False auditing and paying claims.

166. Id.; conviction forfeits office.

167. Id.; what constitutes conversion.

§ 114. Injury to records and misappropriation by ministerial officers.

A sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him in virtue of his office,

Is guilty of felony.

See §§ 58, 94, 470 and 472, Penal Code.

Ayres v. Covill, 18 Barb. 263.

§ 115. Permitting escapes and other unlawful acts committed by ministerial officers.

A sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Receives any gratuity or reward, or any security, or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or

2. Commits any unlawful act tending to hinder justice,

Is guilty of misdemeanor.

See §§ 58, 89, 90, ante.

§ 116. Neglecting or refusing to execute process.

An officer who, in violation of a duty imposed upon him by law to receive a person into his official custody, or into a prison under his charge, willfully neglects or refuses so to do is guilty of a misdemeanor.

See § 154, post.

Smith v. Botens, 18 N. Y. Supp. 224; 36 N. Y. St. Rep. 55.

§ 117. General provision as to neglect, etc.

A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who willfully neglects to perform the duty, is guilty of a misdemeanor. This and the preceding section do not apply to cases of official acts or omissions the preventions or punishment of which is otherwise specially provided by statute.

See §§ 154, 471, 684, Penal Code.

People v. Meakim, 183 N. Y. 221; 8 N. Y. Cr. Rep. 409; 44 N. Y. St. Rep.

752, aff'g 61 Hun, 327; 40 N. Y. St. Rep. 688; 15 N. Y. Supp. 918; People

v. Willis, 34 App. Div. 205; People v. Norton, 7 Barb. 477; People v.

Bedell, 2 Hill, 196; People v. Common Council, 16 Abb. N. C. 114; 2

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How. Pr. (N. S.) 68; Williams v. People, 15 Week. Dig. 817; Smith v. Botens, 36 N. Y. St. Rep. 55; People v. Cook, 8 N. Y. 67; Clark v. Miller, 47 Barb. 38; People v. Brooks, 1 Den. 469; People v. Martin, 48 How. 52.

Police officer. People v. Herlihy, 66 App. Div. 534; rev'd 35 Misc. 711.

§ 117a. Neglect of county officer to make report.

A county officer or an officer whose salary is paid by the county, who neglects or refuses to make a report under oath to the board of supervisors of such county on any subjects or matters connected with the duties of his office, whenever required by resolution of such board, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 117b. Neglect of duty by superintendent or overseer of the poor.

The county superintendents of the poor, or any overseer of the poor, whose duty it shall be to provide for the support of any bastard and the sustenance of its mother, who shall neglect to perform such duty, shall be guilty of a misdemeanor, and shall, on conviction, be liable to a fine of two hundred and fifty dollars, or to imprisonment not exceeding one year, or by both such fine and imprisonment.

Added by ch. 550 of 1896.

§ 118. Delaying to take person arrested for crime before a magistrate.

A public officer or other person having arrested any person upon a criminal charge, who willfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

See Code Civ. Pro., § 165 and § 556, post.

§ 119. Making arrests, etc., without lawful authority.

No sheriff of a county, mayor of a city, or officials, or persons authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen, or other peace officers in this state, to preserve the public peace or quell public disturbance, shall hereafter, at the instance of any agent, society, association or corporation, or otherwise, appoint as such special deputy, special constable, marshal, policeman, or other peace officer, any person who shall not be a citizen of the United States and a resident of the state of New York, and entitled to vote therein at the time of his appointment, and a resident of the same county as the mayor or sheriff or other official making such appointment; and no person shall assume or exercise the functions, powers, duties or privileges incident and belonging to the office of special deputy sheriff, special constables, marshal or policemen, or other peace officer, without having first received his appointment in writing from the authority lawfully appointing him. Any person or persons who shall, in this state, without due authority, exercise, or attempt to exercise the functions of, or hold himself out to any one as a deputy sheriff, marshal, or policeman, con-

stable or peace officer, or any public officer, or person pretending to be a public officer, who, unlawfully, under the pretense or color of any process, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without a regular process therefor, or any person who knowingly violates any other provision of this section, is guilty of a misdemeanor. But nothing herein contained shall be deemed to affect, repeal or abridge the powers authorized to be exercised under sections one hundred and two, one hundred and four, one hundred and sixty-nine, one hundred and eighty-three, eight hundred and ninety-five, eight hundred and ninety-six and eight hundred and ninety-seven of the Code of Criminal Procedure; or under chapter three hundred and forty-six of the laws of eighteen hundred and sixty-three, as amended by chapter two hundred and fifty-nine of the laws of eighteen hundred and sixty-six, and chapter one hundred and ninety-three, of the laws of eighteen hundred and seventy-five; or under chapter two hundred and twenty-three of the laws of eighteen hundred and eighty; or under chapter five hundred and twenty-seven of the laws of eighteen hundred and seventy-three; or under chapter two hundred and five of the laws of eighteen hundred and seventy-five; but all places kept for summer resorts and the grounds of racing associations in the counties of New York, Kings and Westchester, are hereby exempted from the provisions of this act.

Am'd by ch. 384 of 1882, and ch. 272 of 1892.

See Code Civ. Pro., § 183, and § 556, post.

§ 120. Misconduct in executing search warrant.

An officer, who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

See §§ 159, 556, post.

Bell v. Clapp, 10 Johns. 263.

§ 121. Refusing to aid officer in making an arrest.

A person, who, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a misdemeanor.

§ 122. Refusing to make an arrest.

A person, who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.

§ 123. Resisting execution of process, aiding escapes, etc., in county which has been proclaimed in insurrection.

A person, who, after proclamation issued by the governor declaring a county to be in a state of insurrection, resists or aids in resisting the execution of process in such county, or who aids or attempts the rescue or escape of another from lawful custody or confinement in such county, or who resists or aids in resisting a

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force ordered out by the governor to quell or suppress an insurrection, is guilty of a felony.

Am'd by ch. 884 of 1882.

§ 124. Resisting public officer in the discharge of his duty.

A person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays, or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor.

See § 47, ante.

Kline v. Hibbard, 80 Hun, 52.

People v. Hochstein, 36 Misc. 563.

§ 125. Compounding crimes.

A person who takes money, or other property, gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal a crime, or a violation of statute, or to abstain from, discontinue, or delay, a prosecution therefor, or to withhold any evidence thereof, except in a case where a compromise is allowed by law, is guilty:

1. Of a felony, punishable by imprisonment in a state prison for not more than five years, where the agreement or understanding relates to a felony punishable by death, or by imprisonment in a state prison for life;

2. Of a felony, punishable by imprisonment in a state prison for not more than three years, where the agreement or understanding relates to another felony;

3. Of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or by fine of not more than two hundred and fifty dollars, or both, where the agreement or understanding relates to a misdemeanor, or to a violation of a statute for which a pecuniary penalty or forfeiture is prescribed.

See Code Civ. Pro., §§ 664-666.

Devoe v. Davis, 8 N. Y. St. Rep. 727; Kissock v. House, 23 Hun, 85;

Conderman v. Trenchard, 58 Barb. 168; Gilmore's case, 2 C. H. Rec. 29;

Collins' case, 4 C. H. Rec. 139; Dalmouth v. Bennett, 15 Barb. 541;

Conderman v. Hicks, 3 Lans. 108; Buffalo Press Club v. Greene, 5 Misc.

508; Devoe v. Davis, 8 N. Y. St. Rep. 787.

§ 126. Conviction of primary offender, etc.

Upon the trial of an indictment for compounding a crime, it is not necessary to prove that any person has been convicted of the crime or violation of statute, in relation to which an agreement or understanding herein prohibited was made.

See § 32, ante.

People v. Buckland, 13 Wend. 592.

§ 127. Intimidating, etc., public officer.

A person who directly or indirectly addresses any threat or intimidation to a public officer, or to a juror, referee, arbitrator, appraiser, or assessor, or to any other person, authorized by law to hear or determine any controversy or matter, with intent to in-

duce him, contrary to his duty, to do or make, or to omit or delay, any act, decision or determination, is guilty of a misdemeanor.

See §§ 61, 62, 63, 464, Penal Code.

Smith v. Botens, 36 N. Y. St. Rep. 53; 18 N. Y. Supp. 223.

§ 128. Suppressing evidence.

A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein, any book, paper, or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper, or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

See §§ 110, 111, ante.

§ 129. Buying lands in suit.

A person who takes a conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.

Chambers v. Taylor, 12 Abb. N. C. 473; *Hoyt v. Thomson*, 5 N. Y. 320; *Danziger v. Boyd*, 120 N. Y. 629; 30 N. Y. St. Rep. 893; 2 Silv. (Ct. App.) 574; *Tomb v. Sherwood*, 18 Johns. 289; *Preston v. Hunt*, 7 Wend. 53; *Hendricks v. Andrews*, 7 Wend. 152; *Pepper v. Haight*, 20 Barb. 429; *Webb v. Bindon*, 21 Wend. 98; *Bryant v. Ketchum*, 8 Johns. 479; *Thallheimer v. Brinckerhoff*, 3 Cow. 624; *Hassenfrats v. Kelley*, 13 Johns. 467; *Small v. Mott*, 22 Wend. 403; *Etheridge v. Cromwell*, 8 Wend. 629; *Clowes v. Hawley*, 12 Johns. 484; *Sandiford v. Frost*, 9 App. Div. 57; *People v. Warden*, 157 N. Y. 148; *Meigs v. Roberts*, 42 App. Div. 300; see note, 30 Abb. N. C. 175.

§ 130. Buying pretended titles.

A person who buys or sells, or in any manner procures, or takes or makes any covenant or promise to convey any right, or title, real or pretended, to any lands or tenements, unless the grantor thereof or the person making such covenant or promise has been in possession, or he and those by whom he claims, have been in possession of the same or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such covenant or promise made, is guilty of a misdemeanor.

See notes under § 129, ante.

Also *Wright v. Syracuse, etc.*, R. R. Co., 92 Hun, 35; *Dever v. Hagerty*, 43 App. Div. 255; *Allen v. Welch*, 18 Hun, 226; *Dawley v. Brown*, 79 N. Y. 390; *Chamberlain v. Taylor*, 12 Abb. N. C. 473; *Danziger v. Boyd*, 120 N. Y. 628; 30 N. Y. St. Rep. 893.

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§ 131. Mortgage of lands under adverse possession, not prohibited.

The last two sections shall not be construed to prevent any person having a just title to lands in the adverse possession of another, from executing a mortgage upon such lands, nor shall said sections apply to any conveyance or release of lands or tenements to any person in the lawful possession thereof.

Am'd by ch. 282 of 1888.

§ 132. Common barratry defined.

Common barratry is the practice of exciting groundless judicial proceedings.

See 21 Alb. L. J. 440.

§ 133. Declared a misdemeanor.

Common barratry is a misdemeanor.

§ 134. What proof is required.

No person can be convicted of common barratry, except upon proof that he has excited actions or legal proceedings, in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Voorhees v. Dorr, 51 Barb. 587.

§ 135. Interest.

Upon a prosecution for common barratry, the fact that the defendant was himself a party in interest or upon the record to any action or legal proceeding complained of, is not a defense.

§ 136. Buying demands for suit by an attorney.

An attorney or counselor who violates section 73 of the Code of Civil Procedure, relating to buying demands, or section 74 of the Code of Civil Procedure relating to certain promises and gifts, is guilty of a misdemeanor.

See §§ 73-75, Code Civ. Pro.

An attorney cannot agree to advance money to carry on a suit. Pulver v. Harris, 52 N. Y. 73; 62 Barb. 500; Coughlin v. N. Y. C. & H. R. R. Co., 71 N. Y. 443; Randall v. Van Wagener, 115 N. Y. 527; Lee v. V. O. Co., 126 N. Y. 579; Browning v. Marvin, 100 N. Y. 144; 22 Hun, 547.

As to buying judgment or claims. Warner v. Payne, 3 Barb. Ch. 630; Brotherson v. Consalus, 26 How. 213; Moses v. McDivitt, 2 Abb. N. C. 47; 88 N. Y. 62; Wetmore v. Hegeman, 88 N. Y. 73; Godell v. People, 5 Park. 206.

As to purchases at judicial sales, see Mann v. Fairchild, 2 Keyes, 106; 14 Barb. 548; Hall v. Gird, 7 Hill, 586; Arden v. Patterson, 5 Johns. Ch. 44; Barry v. Whitney, 3 Sandf. 696; Wood v. Perry, 1 Barb. 114; Voorhees v. Dorr, 51 Barb. 587; Ramsey v. Gould, 57 Barb. 398.

See Oishei v. Lazzarone, 40 N. Y. St. Rep. 660; Stephens v. Humphrey, 39 N. Y. St. Rep. 184; West v. Kurtz, 19 N. Y. St. Rep. 803; Matter of Clark, 184 N. Y. 222, aff'g 108 App. Div. 150.

§ 137. Buying demands by a justice or constable for suit before a justice.

A justice of the peace or a constable who, directly or indirectly, buys or is interested in buying anything in action, for the purpose

of commencing a suit thereon before a justice, is guilty of a misdemeanor.

Hoag v. Weston, 1 N. Y. St. Rep. 585; 10 Civ. Pro. Rep. 95; *Goodell v. People*, 5 Park. 206.

§ 138. Promising consideration for claims delivered for collection.

A justice of the peace or constable, who, directly or indirectly, gives, or promises to give, any valuable consideration to any person as an inducement to bring, or in consideration of having brought, a suit thereon before a justice, is guilty of a misdemeanor.

Am'd by ch. 384 of 1882.

See cases under § 137.

§ 139. Forfeiture of office.

A person convicted of a violation of any of the three preceding sections, in addition to the punishment, by fine and imprisonment, prescribed therefor by this Code, forfeits his office.

Hoag v. Weston, 10 Civ. Pro. Rep. 95; 1 N. Y. St. Rep. 585.

§ 140. Receiving claims, in what cases allowable.

Nothing in the four preceding sections shall be construed to prohibit the receiving in payment of anything in action for any estate, real or personal, or for any services of an attorney or counselor actually rendered, or for a debt antecedently contracted; or the buying or receiving of anything in action for the purpose of remittance, and without any intent to violate the preceding sections.

People v. Walbridge, 3 Wend. 129; *Hall v. Bartlett*, 9 Barb. 297; *Mann v. Fairchild*, 2 Keyes, 106; *Watson v. McLaren*, 19 Wend. 557; *Baldwin v. Latson*, 2 Barb. Ch. 306; *Warner v. Paine*, 3 Barb. Ch. 630; *Brotherson v. Consalus*, 28 How. 218; *Van Renssalaer v. Sheriff*, etc., 1 Cow. 442; *Coughlin v. Railroad Co.*, 71 N. Y. 443; *Ely v. Cooke*, 2 Abb. App. Dec. 14; *Moses v. McDivitt*, 88 N. Y. 62; *Goodell v. People*, 5 Park. 206; *Ramsey v. Gould*, 57 Barb. 398; 8 Abb. (N. S.) 17.

§ 141. Application of previous sections to persons prosecuting in person.

The provisions of sections 136, 138 and 140, relative to the buying of claims by an attorney, counselor, justice of the peace or constable, with intent to prosecute them, or to the lending or advancing of money by an attorney or counselor in consideration of a claim being delivered for collection, apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting in person an action or legal proceeding.

Am'd by ch. 384 of 1882.

§ 142. Witness' privilege restricted.

No person shall be excused from testifying, in any civil action or legal proceeding, to any facts showing that a thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon a criminal prosecution.

See § 712, post.

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§ 143. Criminal contempts.

A person who commits a contempt of court, of any one of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority;
2. Behavior of the like character, committed in the presence of a referee or referees, while actually engaged in a trial or hearing, pursuant to the order of the court, or in the presence of a jury, while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law;
3. Breach of the peace, noise, or other disturbance, directly tending to interrupt the proceedings of a court, jury, or referee;
4. Willful disobedience to the lawful process or other mandate of a court;
5. Resistance willfully offered to its lawful process or other mandate;
6. Contumacious and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory;
7. Publication of a false or grossly inaccurate report of its proceedings. But no person can be punished as provided in this section, for publishing a true, full, and fair report of a trial, argument, decision, or other proceeding had in court.

See §§ 247, 680 and 681, post. Publishing true report official proceedings, § 247, Penal Code. Punishment of contempt, § 680, Penal Code. Mitigation of punishment, § 681, Penal Code.

Power of court to punish. Weeks v. Smith, 3 Abb. Pr. 211; Conover v. Wood, 5 Abb. Pr. 84; King v. Flynn, 37 Hun, 335.

What is not contempt. People ex rel. Munsell v. Oyer & T., 101 N. Y. 245; 4 N. Y. Cr. Rep. 70; 3 How. 413.

Legislative contempts. People ex rel. McDonald v. Keeler, 32 Hun, 582; People ex rel. Roosevelt v. Edson, 51 N. Y. Super. 238; People v. Learned, 5 Hun, 626.

Subd. 1. Matter of Percy, 2 Daly, 530; Matter of Griffin, 15 N. Y. St. Rep. 400; 1 N. Y. Supp. 7; Matter of Watson, 3 Lans. 408; Matter of Hackley, 24 N. Y. 74; Bergh's case, 15 Abb. (N. S.) 266; Matter of Choate, 121 N. Y. 678; People v. Court, etc., 27 How. Pr. 14; Klugman's case, 49 How. Pr. 484.

Subd. 4. People v. Albany R. Co., 24 N. Y. 261; 37 Barb. 216; Loop v. Gould, 17 Hun, 585; Sherwin v. People, 100 N. Y. 351; 3 N. Y. Cr. Rep. 524; People ex rel. Sherwin v. Mead, 92 N. Y. 415; Bowen v. Hunter, 45 How. Pr. 193; In re Percy, 2 Daly, 539; Weeks v. Smith, 3 Abb. Pr. 211; People v. Hefferman, 38 How. Pr. 402.

Subd. 5. People v. Fancher, 2 Hun, 226; Clark v. Brooks, 26 How. Pr. 254; People v. Hovey, 92 N. Y. 554; People v. Sharp, 107 N. Y. 427; Clapp v. Lathrop, 23 How. Pr. 423; People ex rel. Valieste v. Dyckman, 24 How. Pr. 222; People ex rel. Jones v. Davidson, 35 Hun, 471; People v. Marston, 18 Abb. Pr. 257.

Subd. 6. People ex rel. McDonald v. Keeler, 32 Hun, 582; Matter of Taylor, 8 Misc. 181; People ex rel. Lewisohn v. Wyatt, 81 App. Div. 51, rev'd 39 Misc. 456.

Subd. 7. Matter of Griffin, 15 N. Y. St. Rep. 400; 1 N. Y. Supp. 7; People ex rel. Barnes v. Court Sessions, 82 Hun, 280, rev'd 147 N. Y. 290. See Matter of Terry, 128 U. S. 289; People v. Dwyer, 90 N. Y. 402; Rutherford v. Holmes, 66 N. Y. 368; People v. Webster, 3 Park, 503; People

v. Meakim, 133 N. Y. 225; Matter of Choate, 41 Alb. L. J. 257, citing State v. Doty, 32 N. J. Law, 408; Com. v. Craus, 3 Penn. L. J. 458; People v. Fancher, 4 T. & C. 476.

§ 144. Grand juror acting after challenge has been allowed.

A grand juror who, with knowledge that a challenge, interposed against him by a defendant, has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

See §§ 242, 243, Code Crim. Pro.

§ 145. Disclosure of depositions taken by a magistrate.

A magistrate or clerk of any magistrate who willfully permits any deposition taken on an examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk, to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney-general, the district attorney of the county and his assistants, the complainant and his counsel, and the defendant and his counsel, is guilty of a misdemeanor.

Am'd by ch. 145 of 1888.

See § 206, Code Crim. Pro.

Smith v. Botens, 36 N. Y. St. Rep. 55; 13 N. Y. Supp. 224.

§ 146. Disclosure of depositions returned by grand jury, with presentment.

A clerk of any court who willfully permits any deposition returned by a grand jury and filed with such clerk, to be inspected by any person, except the court, the deputies or assistants of such clerk, and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

See § 206, Code Crim. Pro.

Smith v. Botens, 36 N. Y. St. Rep. 55; 13 N. Y. Supp. 224.

§ 147. Racing near a courthouse.

A person concerned in any racing, running or other trial of speed between horses or other animals within one mile of the place where a court is actually sitting, is guilty of a misdemeanor, and it shall not be lawful for any person, association, corporation or copartnership to build, maintain or operate any racetrack within four miles of any courthouse situated in a county adjoining a city of the first class which by the last state enumeration contained not more than seventy-two thousand inhabitants and not less than sixty-eight thousand inhabitants; but nothing in this section shall apply to or affect trials of speed between horses or other animals upon the grounds of a county agricultural society during the days on which the fairs of such society are held, nor apply to or affect the maintenance and operation of any racetrack upon which races were conducted in the year nineteen hundred and five under the license of the state racing commission.

Am'd by ch. 109 of 1900 and ch. 353 of 1906.

See § 57, Code Crim. Pro.

§ 148. Misconduct by attorneys.

An attorney or counselor who,

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party as prohibited by section 70 of the Code of Civil Procedure; or,

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2. Willfully delays his client's suit with a view to his own gain; or, willfully receives any money or allowance for or on account of any money which he has not laid out, or become answerable for, as prohibited by section 71 of the Code of Civil Procedure,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by this Code, he forfeits to the party injured treble damages, to be recovered in a civil action.

See §§ 136, 139, 670, 671, Penal Code.

Quinn v. Lloyd, 36 Hun. Pr. 378; *People v. Reavey*, 38 Hun. 418; 39 Hun. 364; 4 N. Y. Cr. Rep. 23; *Looff v. Lawton*, 14 Hun. 588; *Smith v. Botens*, 36 N. Y. St. Rep. 55; *People v. Oishei*, 20 Misc. 164; *Neven's case*, 5 C. H. Rec. 79.

§ 148a. Advertising to procure divorces.

Whoever prints, publishes, distributes or circulates, or causes to be printed, published, distributed or circulated any circular, pamphlet, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This act shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

Added by ch. 208 of 1902.

§ 149. Permitting attorney's name to be used.

If an attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

York v. Peck, 31 Barb. 350.

§ 150. In what cases lawful.

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers, or municipal corporation, on behalf of another party, the attorney-general, or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein, to be taken in his name by an attorney to be chosen by the party in interest.

§ 151. Production of pretended heir.

A person who fraudulently produces an infant, falsely pretending it to have been born of a parent whose child is or would be entitled to inherit real property, or to receive a share of personal

property, with intent to intercept the inheritance of such real property, or the distribution of such personal property, or to defraud any person out of the same, or any interest therein; or who, with intent fraudulently to obtain any property, falsely represents himself or another to be a person entitled to an interest or share in the estate of a deceased person, either as executor, administrator, husband, wife, heir, legatee, devisee, next of kin, or relative of such deceased person, is punishable by imprisonment in a state prison for not more than ten years.

People v. Cunningham, 3 Park. 531, rev'd 3 Park. 520.

§ 152. Substituting one child for another.

A person, to whom a child has been confided for nursing, education, or any other purpose, who, with intent to deceive a parent, guardian or relative of the child, substitutes or produces to such parent, guardian or relative, another child or person, in place of the child so confided, is punishable by imprisonment in a state prison for not more than seven years.

§ 153. Importing foreign convicts.

An owner, master or commander of any vessel arriving from a foreign country, who knowingly lands or permits to land at any port, city, harbor, or place within this state, any passenger, seaman or other person who is a foreign convict of any crime which, if committed within this state, would be punishable therein, without giving notice thereof to the mayor of such city, or other principal municipal officer of such port or place, is guilty of a misdemeanor.

See § 440, post; Code Crim. Pro., § 674.

§ 154. Omission of duty by public officer.

Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding a public trust or employment, every willful omission to perform such duty, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

See §§ 116, 117, 684, Penal Code.

People v. Calhoun, 3 Wend. 421; People v. Coon, 15 Wend. 277; People v. Brooks, 1 Den. 457; People v. Bogart, 3 Park. 143; Gardner v. People, 3 Hun, 222; People v. Norton, 7 Barb. 477; Clark v. Miller, 47 Barb. 38; Cunningham v. Bucklin, 8 Cow. 178; People v. Martin, 43 How. Pr. 52, 54; People v. Cook, 8 N. Y. 67, 84; People v. Bedell, 2 Hill, 196; Greene v. Rumsey, 2 Wend. 611. See Gardner v. People, 3 Hun, 222; Connors v. Adams, 13 Hun, 427; People v. Stocking, 32 How. Pr. 49; 50 Barb. 573; In re Pickett, 55 How. 491; Bently v. Phelps, 27 Barb. 524; People v. Ryall, 58 Hun, 235; 34 N. Y. St. Rep. 204; People v. Long I. R. Co., 134 N. Y. 506; 47 N. Y. St. Rep. 650, aff'd 58 Hun, 414; 34 N. Y. St. Rep. 716; 12 N. Y. Supp. 41.

Indictment held sufficient. People v. Thomas, 32 Misc. 170.

Police officer. People v. Herlihy, 66 App. Div. 534, rev'd 35 Misc. 711.

§ 154a. False marking enrolled person exempt.

A county clerk who marks "exempt" any person enrolled as liable to military duty, whom he knows not to be exempt, is guilty of a misdemeanor.

Added by ch. 692 of 1898.

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§ 155. Punishment for commission of prohibited acts.

Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

See § 471, post.

Foote v. People, 56 N. Y. 321; People v. Bogart, 3 Abb. 202; 3 Park. 143; Hodgman v. People, 4 Den. 235; Ex parte Pickett, 56 How. 491; Mayor v. Eisler, 2 Civ. Pro. 125; Foster v. Townshend, 12 Abb. (N. S.) 471; People v. Beck, 30 N. Y. Supp. 475; 10 Misc. 81.

§ 156. Disclosing fact of indictment having been found.

A judge, grand juror, district attorney, clerk, or other officer, who, except in the due discharge of his official duty, discloses, before an accused person is in custody, the fact of an indictment having been found or ordered against him, is guilty of a misdemeanor.

See Code Crim. Pro., § 56.

§ 157. Grand juror disclosing what transpired before the grand jury.

A grand juror who except when lawfully required by a court or officer willfully discloses, either

1. Any evidence adduced before the grand jury; or
2. Any thing which he himself or any other member of the grand jury said, or in what manner he or any other grand juror voted, upon any matter before them;

Is guilty of a misdemeanor.

See Code Crim. Pro., §§ 265, 266.

Smith v. Botens, 36 N. Y. St. Rep. 55; 13 N. Y. Supp. 224; People v. Hulbut, 4 Den. 133.

§ 157a. Stenographer disclosing evidence taken before grand jury.

A stenographer appointed to take testimony given before a grand jury who permits any person other than the district attorney to take a copy of such testimony or of any portion thereof or to read the same or any portion thereof, except on the written order of the court, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 158. Instituting suit in false name.

A person who institutes or prosecutes an action or other proceeding in the name of another without his consent and contrary to the statutes, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months.

See § 1900 of Code Civ. Pro.

§ 159. Maliciously procuring search warrant.

A person who maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

See § 120, ante; U. S. Const., Fourth Amdt.

§ 160. Communications with prisoners prohibited.

A person who:

1. Not being authorized by law, visits any state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime or communicates with any prisoner

therein without the consent of the agent or warden, superintendent, keeper, sheriff or other person having charge thereof or without such consent brings into or conveys out of a state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, any letter, information or writing to or from any prisoner or

2. Conveys in or takes from such prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, or who personally or through any other person or persons gives, sells, furnishes or otherwise delivers to any prisoner or prisoners in custody any drug, liquor or any article prohibited by law or by the rules of the superintendent, keeper, sheriff, board of managers or other person, or official having charge or control thereof; is guilty of a misdemeanor.

Am'd by ch. 662 of 1893, and ch. 333 of 1903.
See Code Crim. Pro., § 56, subd. 14.

§ 161. Neglect to return names of constables.

A town clerk who willfully omits to return to the county clerk the name of a person who has qualified as constable, pursuant to law, is punishable by a fine not exceeding ten dollars.

§ 162. Falsely certifying, etc., as to deeds.

An officer authorized by law to record a conveyance of real property, or of any other instrument, which by law may be recorded, who knowingly and falsely certifies that such a conveyance or instrument has been recorded, is guilty of a felony.

§ 163. Other false certificates.

A public officer who, being authorized by law to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not expressly provided by law, is guilty of a misdemeanor.

People v. Harrington, 15 Abb. N. C. 163.

§ 164. Penalty for recording, etc., without acknowledgment.

A public officer authorized to file or record any instrument or conveyance of, or affecting property which is duly proved or acknowledged, who knowingly files or records any such instrument or conveyance which is not accompanied by a certificate, according to law, of the proof or acknowledgment, is guilty of a misdemeanor.

See § 673, post.

People v. Brown, 7 Wend. 493; People v. Stocking, 50 Barb. 573.

§ 165. False auditing and paying claims.

A public officer, or a person holding or discharging the duties of any office or place of trust under the state, or in any county, town, city or village, a part of whose duties is to audit, allow or pay, or take part in auditing, allowing, or paying claims or demands upon the state, or such county, town, city or village, who knowingly audits, allows or pays, or directly or indirectly consents to, or in any way connives at the auditing, allowance or payment of any claim or demand, against the state, or such county, town, city or village, which is false or fraudulent, or contains charges, items or claims which are false or fraudulent, is guilty of felony, punishable by imprisonment for a term not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Am'd by ch. 662 of 1892.

See § 672, post.

People v. Stocking, 50 Barb. 573; 82 How. Pr. 48; People v. King, 19

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Misc. 99; People v. Stock, 21 Misc. 148; People v. Fielding, 158 N. Y. 554, rev'g 36 App. Div. 401; People v. Klipfel, 160 N. Y. 375, aff'g 37 App. Div. 224.

§ 166. Id., conviction forfeits office.

A person who, being or acting as a public officer or otherwise, by willfully auditing, or paying, or consenting to, or conniving at the auditing or payment of a false or fraudulent claim or demand, or by any other means, wrongfully obtains, receives, converts, disposes of or pays out or aids, or abets another in obtaining, receiving, converting, disposing of or paying out any money or property, held, owned or in the possession of the state, or of any city, county or village, or other public corporation, or any board, department, agency, trustee, agent or officer thereof, is guilty of a felony, punishable by imprisonment for not less than three nor more than five years, or by a fine not exceeding five times the amount or value of the money or the property converted, paid out, lost or disposed of by means of the act done or abetted by such person, or by both such imprisonment and fine. The amount of any such fine when paid or collected, shall be paid to the treasury of the corporation or body injured. A conviction under this section forfeits any office held by the offender, and renders him incapable thereafter of holding any office or place of trust.

See § 672, post.

People v. Willis, 24 Misc. 539.

§ 167. Id., what constitutes conversion.

A transfer in whole or part of any deposit with any bank or other depositary, or of any credit, claim or demand upon such depositary, whereby the right, title or possession of the owner or holder of such deposit, or of any custodian thereof, is impaired or affected, is a conversion thereof under the last section.

CHAPTER VIII.

Conspiracy.

Sec. 168. Conspiracy defined.

- 169. Conspiracies against peace, etc.
- 170. No other conspiracies punishable.
- 171. Overt act, when necessary.
- 171a. Coercion by employers.
- 171b. Interfering with employment of member of national guard.
- 171c. Discriminating against members of national guard.

§ 168. Conspiracy defined.

If two or more persons conspire, either

1. To commit a crime; or
2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime; or
3. Falsely to institute or maintain an action or special proceeding; or
4. To cheat and defraud another out of property, by any means which are in themselves criminal, or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses; or
5. To prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use or employment thereof; or
6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws;

Each of them is guilty of a misdemeanor.

See §§ 170, 653, 673, post.

Intent. Adams v. People, 9 Hun, 89; Storm's case, 1 C. H. Rec. 169;

People v. Powell, 63 N. Y. 88; People v. Bates, 79 Hun, 587.

Indictment. People v. Willis, 34 App. Div. 203.

Proof. Kelley v. People, 55 N. Y. 565; People v. Sharp, 45 Hun, 460; 5 N. Y. Cr. Rep. 389; People v. Paolik, 7 N. Y. Cr. Rep. 30; Ormsby v. People, 53 N. Y. 472; People v. Kief, 87 N. Y. St. Rep. 478; People v. Bassford, 8 N. Y. Cr. Rep. 219; People v. Murphy, 3 N. Y. Cr. Rep. 339; Adams v. People, 9 Hun, 89; People v. Powell, 63 N. Y. 88; People v. Squire, 6 N. Y. Cr. Rep. 475; People v. Chandler, 54 App. Div. 111.

What constitutes conspiracy. Leonard v. Poole, 114 N. Y. 377; People v. Sugar Co., 121 N. Y. 582; Hitchcock's case, 6 C. H. Rec. 43; Leggett v. Postley, 2 Paige, 599; People v. Fisher, 14 Wend. 9; Van Mater v. Babcock, 23 Barb. 638; Buffalo L. O. Co. v. Everest, 30 Hun, 588; Lambert v. People, 9 Cow. 578; People ex rel. Lawrence v. Brady, 56 N. Y. 189; Emmanuel's case, 6 C. H. Rec. 33; Thomas v. Union, 121 N. Y. 50; People v. Squire, 20 Abb. N. C. 369; People v. Duke, 19 Misc. 294; People v. Willis, 34 App. Div. 203.

Boycott. Thomas v. Mut. P. Union, 121 N. Y. 50; Old Dom. Co. v. McKenna, 18 Abb. N. C. 262; People v. Wilzig, 4 N. Y. Cr. Rep. 408; People v. Lenhardt, 4 N. Y. Cr. Rep. 317; People v. Kostka, 4 N. Y. Cr. Rep. 429. See 35 Alb. L. J. 224; Matthews v. Shankland, 24 Misc. 604.

Strike. People ex rel. Hill v. Walsh, 15 N. Y. St. Rep. 17; 6 N. Y. Cr. Rep. 292; People ex rel. Gill v. Smith, 5 N. Y. Cr. Rep. 509.

Subd. 3. People v. Flack, 125 N. Y. 327; 34 N. Y. St. Rep. 723; People v. Chase, 16 Barb. 495.

Subd. 4. People v. Olson, 39 N. Y. St. Rep. 295; March v. People, 7 Barb. 391; People v. Wiechers, 94 App. Div. 19.
Subd. 5. People ex rel. Gill v. Smith, 5 N. Y. Cr. Rep. 512; Phillips v. R., W., etc., Co., 20 N. Y. St. Rep. 46; People v. Fisher, 19 Wend. 9; Van Marter v. Babcock, 23 Barb. 633; Davis v. Zimmerman, 91 Hun, 492; Matthews v. Shankland, 24 Misc. 611; People v. McFarlin, 43 Misc. 591; People ex rel. Burnham v. Flynn, 114 App. Div. 578, rev'd, 49 Misc. 328.
Subd. 6. People v. Sheldon, 139 N. Y. 261; Drake v. Siebold, 81 Hun, 181; People v. Everest, 51 Hun, 26; People v. N. R. S. R. Co., 121 N. Y. 582; Leonard v. Poole, 114 N. Y. 377; Arnot v. P. & E. C. Co., 68 N. Y. 558; Dueber W. C. Co. v. Howard, etc., Co., 3 Misc. 585; People v. Lyon, 99 N. Y. 210; 1 N. Y. Cr. Rep. 400; People v. Snaith, 57 Hun, 334; 32 N. Y. St. Rep. 569; Hitchcock's case, 6 C. H. Rec. 43; People v. Lenhardt, 4 N. Y. Cr. Rep. 826; People v. Fisher, 14 Wend. 9; Stanton v. Allen, 5 Den. 434.

See also note, 24 Abb. N. C. 270.

§ 169. Conspiracies against peace, etc.

If two or more persons, being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in a state prison not exceeding ten years.

Am'd by ch. 384 of 1882.

§ 170. No other conspiracies punishable.

No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade, or handicraft, for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy.

See §§ 168 and 673-675, Penal Code.

Curran v. Galen, 152 N. Y. 36; People v. Wilzig, 4 N. Y. Cr. Rep. 418; Master Stevedores' Assn. v. Walsh, 2 Daly, 1; People ex rel. Gill v. Smith, 5 N. Y. Cr. Rep. 509; Zeigler v. Nolan, 2 City Ct. Rep. 51; People ex rel. Gill v. Walsh, 6 N. Y. Cr. Rep. 292; 15 N. Y. St. Rep. 17; Reynolds v. Everett, 67 Hun, 304; 50 N. Y. St. Rep. 896; 22 N. Y. Supp. 818; People v. Barondess, 133 N. Y. 649; 8 N. Y. Cr. Rep. 376; 45 N. Y. St. Rep. 248, rev'd 61 Hun, 577; 8 N. Y. Cr. Rep. 234; 41 N. Y. St. Rep. 659; 16 N. Y. Supp. 439; Rogers v. Evarts, 17 N. Y. Supp. 267; People v. McFarlin, 43 Misc. 591.

171. Overt act, when necessary.

No agreement except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

See Code Crim. Pro., § 388, and § 720, post.

People v. Willis, 84 App. Div. 205; People v. Brickner, 15 N. Y. Supp. 531; 8 N. Y. Cr. Rep. 217; People v. Mather, 4 Wend. 229; Reynolds v. Everett, 67 Hun, 304; 50 N. Y. St. Rep. 896; 22 N. Y. Supp. 813; People v. Squire, 20 Abb. N. C. 375; 6 N. Y. Cr. Rep. 264; People v. Flack, 125 N. Y. 333; 34 N. Y. St. Rep. 727; 8 N. Y. Cr. Rep. 88; People v. Chase, 16 Barb. 495; People v. Everest, 51 Hun, 29; 20 N. Y. St. Rep. 465; 3 N. Y. Supp. 617; People v. Sheldon, 139 N. Y. 251; People v. Summerfuld, 48 Misc. 242.

§ 171a. Coercion by employers.

Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employe or employes, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employe, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor. The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.

Added by ch. 688 of 1887.

Curran v. Galen, 22 N. Y. Supp. 827; 52 N. Y. St. Rep. 479; *Master Stevedores' Assn. v. Walsh*, 2 Daly, 1; *Reynolds v. Everett*, 22 N. Y. Supp. 313; 50 N. Y. St. Rep. 896.

Unconstitutional. *People v. Marcus*, 185 N. Y. 288, aff'g 110 App. Div. 256.

§ 171b. Interfering with employment of member of national guard.

A person who, either by himself or with another, willfully deprives a member of the national guard of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said national guard, or his employer, in respect of his trade, business, or employment, because said member of said national guard is such member, or dissuades any person from enlistment in the said national guard by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, is guilty of a misdemeanor.

Added by ch. 349 of 1903.

§ 171c. Discriminating against members of national guard.

No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the national guard of the state of New York, because of such membership in respect of the eligibility of such member of the said national guard to membership in such association or corporation, or in respect of his right to retain said last mentioned membership; it being the purpose of this section and the section immediately preceding to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership of said national guard. A person who aids in enforcing any such provisions against a member of the said national guard with the intent to discriminate against him because of such membership, is guilty of a misdemeanor.

Added by ch. 349 of 1903.

TITLE IX.

Of Crimes Against the Person.

- Chap. I. Suicide.
 II. Homicide.
 III. Maiming.
 IV. Kidnapping.
 V. Assaults.
 VI. Robbery.
 VII. Duels and challenges.
 VIII. Libel.

CHAPTER I.

Suicide.

- Sec. 172. Suicide defined.
 173. No forfeiture imposed for suicide.
 174. Attempting suicide.
 175. Aiding suicide.
 176. Abetting an attempt at suicide.
 177. Incapacity of person aided, no defense.
 178. Punishment of attempting suicide.

§ 172. Suicide defined.

Suicide is the intentional taking of one's own life.

Freeman v. Nat. B. Soc., 5 N. Y. St. Rep. 82; Darrow v. Family Fund Soc., 116 N. Y. 542; 27 N. Y. St. Rep. 476, aff'g 42 Hun, 247; 3 N. Y. St. Rep. 745; Shipman v. Protected Home Circle, 174 N. Y. 398, mod'y 66 App. Div. 448.

§ 173. No forfeiture imposed for suicide.

Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

See § 710, post.

Freeman v. Nat. Ben. Soc., 5 N. Y. St. Rep. 82; Darrow v. Family Fund Soc., 116 N. Y. 542; 27 N. Y. St. Rep. 476, aff'g 42 Hun, 247; 3 N. Y. St. Rep. 745.

§ 174. Attempting suicide.

A person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which, if committed upon or towards another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

See § 22, supra.

Darrow v. Family Fund Soc., 116 N. Y. 542; 27 N. Y. St. Rep. 476, aff'g 42 Hun, 247; 3 N. Y. St. Rep. 745.

§ 175. Aiding suicide.

A person who willfully, in any manner, advises, encourages, abets, or assists another person in taking the latter's life, is guilty of manslaughter in the first degree.

§ 176. Abetting an attempt at suicide.

A person who willfully, in any manner, encourages, advises, assists or abets another person in attempting to take the latter's life, is guilty of a felony.

§ 177. Incapacity of person aided, no defense.

It is not a defense to a prosecution under either of the last two sections, that the person who took, or attempted to take, his own life, was not a person deemed capable of committing crime.

Matter of Card, 28 N. Y. St. Rep. 529; 8 N. Y. Supp. 297.

§ 178. Punishment of attempting suicide.

Every person guilty of attempting suicide is guilty of felony, punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

Matter of Card, 28 N. Y. St. Rep. 529; 8 N. Y. Supp. 297; Darrow v. Family Fund Soc., 116 N. Y. 542; 27 N. Y. St. Rep. 476, aff'g 42 Hun, 245; 8 N. Y. St. Rep. 745.

CHAPTER II.**Homicide.**

- Sec. 179. Homicide defined.**
- 180. Different kinds of homicide.
 - 181. What proof of death is required.
 - 182. Common-law petit treason is homicide.
 - 183. Murder in the first degree defined
 - 183a. Murder in the first degree.
 - 184. Id., second degree.
 - 185. Duel fought out of this state.
 - 186. Punishment of murder in first degree, how punished.
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 - 188. Manslaughter defined.
 - 189. Id., in the first degree.
 - 190. Killing unborn quick child.
 - 191. Id., by administering drugs, etc.
 - 192. Manslaughter in first degree, how punished.
 - 193. Manslaughter in second degree.
 - 194. Women taking drugs, etc.
 - 195. By negligent use of machinery.
 - 196. Owner of animals.
 - 197. Killing by overloading passenger vessel.
 - 198. Liability of persons in charge of steamboats.
 - 199. Liability of persons in charge of steam engines.
 - 200. Liability of physicians.
 - 201. Liability of persons making or keeping gunpowder contrary to law.
 - 202. Punishment of manslaughter in second degree.
 - 203. Homicide, when excusable.
 - 204. Justifiable homicide.
 - 205. Id.

§ 179. Homicide defined.

Homicide is the killing of one human being by the act, procurement or omission of another.

Homicide is presumed malicious. *People v. McLeod*, 1 Hill, 377.

See *People v. McCann*, 18 N. Y. 58; *Fitzgerald v. People*, 37 N. Y. 418; *Brotherton v. People*, 75 N. Y. 159; *People v. Conroy*, 97 N. Y. 62; *People v. McCarthy*, 110 N. Y. 309; 47 Hun, 491; *People v. Webster*, 189 N. Y. 78; *People v. Willett*, 36 Hun, 500.

§ 180. Different kinds of homicide.

Homicide is either

- 1. Murder;
- 2. Manslaughter;
- 3. Excusable homicide; or,
- 4. Justifiable homicide.

People v. Connors, 18 Misc. 586; *People v. Giblin*, 114 N. Y. 186; 7 N. Y. Cr. Rep. 180; *Stokes v. People*, 53 N. Y. 184; *Sawyer v. People*, 1 N. Y. Cr. Rep. 249; *People v. Beckwith*, 103 N. Y. 367; 5 N. Y. Cr. Rep. 229; *People v. Hill*, 19 N. Y. St. Rep. 672; *People v. Downs*, 56 Hun, 11; 29 N. Y. St. Rep. 121; 7 N. Y. Cr. Rep. 487; *People v. Hill*, 49 Hun, 432; 19 N. Y. St. Rep. 672; 3 N. Y. Supp. 564; *Matter of Joerns*, 51 Misc. 395.

§ 181. What proof of death is required.

No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant as alleged are each established, as independent facts; the former by direct proof and the latter beyond a reasonable doubt.

Am'd by ch. 384 of 1882.

The death of the person must be established by direct evidence, and the criminal act by direct or circumstantial evidence. *People v. Benham*, 180 N. Y. 426; *People v. Place*, 157 N. Y. 584; *People v. Beckwith*, 108 N. Y. 67; 7 N. Y. Cr. Rep. 146, aff'g 45 Hun, 423; *People v. Deacons*, 109 N. Y. 374; *People v. Palmer*, 109 N. Y. 110, rev'g 46 Hun, 479; *People v. Bennett*, 49 N. Y. 187; *Buloff v. People*, 18 N. Y. 178; *People v. Minisci*, 12 N. Y. St. Rep. 719; *People v. McGonegal*, 42 N. Y. St. Rep. 811; *People v. O'Connell*, 78 Hun, 326.

The section is a statement of the common-law rule. *People v. Hennessey*, 15 Wend. 147; *People v. Badgley*, 16 Wend. 23.

§ 182. Common-law petit treason is homicide.

The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished; and those homicides are punishable, when not justifiable or excusable, as prescribed by this Code.

§ 183. Murder in the first degree defined.

The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed either .

1. From a deliberate and premeditated design to effect the death of the person killed, or of another; or

2. By an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual; or

3. Without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise; or

4. When perpetrated in committing the crime of arson in the first degree.

Am'd by ch. 384 of 1882.

See §§ 17-23, ante.

Evidence. *People v. Willett*, 92 N. Y. 29; 1 How. Pr. (U. S.) 196; 3 N. Y. Cr. Rep. 54; *People v. Sudram*, 88 N. Y. 196; 1 N. Y. Cr. Rep. 448; *People v. Donovan*, 3 N. Y. Cr. Rep. 79; *People v. Chacon*, 3 N. Y. Cr. Rep. 418; *People v. Conroy*, 97 N. Y. 62, aff'g 83 Hun, 119; *People v. Kelly*, 35 Hun, 295; *People v. Petmecky*, 99 N. Y. 415, aff'g 2 N. Y. Cr. Rep. 450; *People v. Riley*, 8 N. Y. Cr. Rep. 374; *People v. Stokes*, 2 N. Y. Cr. Rep. 382; *People v. Jefferson*, 98 N. Y. 631; *People v. Evans*, 40 Hun, 492; *People v. Carpenter*, 102 N. Y. 238; *People v. Mondon*, 38 Hun, 188; 103 N. Y. 211; *People v. Buddensieck*, 4 N. Y. Cr. Rep. 280; *People v. Druse*, 103 N. Y. 635; *People v. Ogle*, 104 N. Y. 511; *People v. Smith*, 104 N. Y. 491; *People v. Greenwall*, 108 N. Y. 296; 115 N. Y. 520; *People v. Driscoll*, 107 N. Y. 414; *People v. Willson*, 109 N. Y. 345; *People v. Deacons*, 107 N. Y. 374; *People v. Johnson*, 110 N. Y. 184; *People v. Jackson*, 111 N. Y. 632; *People v. Chapleau*, 121 N. Y. 266; *People v. Kemmler*, 119 N. Y. 580; *People v. McElvaine*, 121 N. Y. 250; *People v. Packenham*, 115 N. Y. 200; *People v. Smiler*, 125 N. Y. 717; *People v. Harris*, 136 N. Y. 423; *People v. Papl*, 138 N. Y. 616; *People*

v. Geoghan, 138 N. Y. 677; People v. Pustolka, 149 N. Y. 570; People v. Hess, 8 App. Div. 143; People v. Barberi, 149 N. Y. 256; People v. Miles, 143 N. Y. 385; People v. Gallo, 149 N. Y. 106; People v. Kelly, 113 N. Y. 649; People v. Unio, 149 N. Y. 317; People v. Hock, 150 N. Y. 291; People v. Strait, 148 N. Y. 568; People v. Corey, 148 N. Y. 476; People v. Conroy, 153 N. Y. 174; People v. Barker, 153 N. Y. 111; People v. Burgess, 153 N. Y. 561; People v. Hughson, 154 N. Y. 153; People v. Sutherland, 154 N. Y. 345; People v. Ledwon, 153 N. Y. 10; People v. Constantino, 153 N. Y. 24; People v. Decker, 157 N. Y. 186; People v. Martin, 33 App. Div. 282; People v. Wise, 163 N. Y. 440; People v. Ciardi, 168 N. Y. 145.

Declarations of deceased regarding evidence. People v. Cascone, 185 N. Y. 317. **Circumstantial evidence.** People v. Harris, 186 N. Y. 423; People v. Hamilton, 187 N. Y. 531; People v. Johnson, 140 N. Y. 360; People v. Hampton, 144 N. Y. 639; People v. Buchanan, 145 N. Y. 1; People v. Senton, 187 N. Y. 495.

Threats. People v. Johnson, 185 N. Y. 219.

See People v. Wilson, 145 N. Y. 628; People v. Leach, 126 N. Y. 392; People v. Kerrigan, 147 N. Y. 210; People v. Shea, 147 N. Y. 78; People v. Hoch, 150 N. Y. 291; People v. Mayhew, 150 N. Y. 346; People v. Feigenbaum, 148 N. Y. 636.

Indictment. People v. McDonnell, 92 N. Y. 657; Daly v. People, 32 Hun, 182; People v. Conroy, 97 N. Y. 62, aff'g 33 Hun, 119; 2 N. Y. Cr. Rep. 247; People v. Menken, 38 Hun, 90; People v. Rugg, 98 N. Y. 537; People v. Cole, 2 N. Y. Cr. Rep. 108; People v. Dowling, 1 N. Y. Cr. Rep. 529; People v. Singer, 18 Abb. N. C. 96; People v. Giblin, 115 N. Y. 196.

Charge of the court. People v. Carlton, 115 N. Y. 623; People v. Granger, 187 N. Y. 67.

Intoxication. People v. Fish, 125 N. Y. 136; People v. Leonardi, 143 N. Y. 360.

Sufficient evidence to establish intent. People v. Hovey, 29 Hun, 382; 1 N. Y. Cr. Rep. 180, aff'g 92 N. Y. 554; Walsh v. People, 88 N. Y. 458; People v. Cornetti, 92 N. Y. 85; People v. Kierman, 3 N. Y. Cr. Rep. 247; People v. Palmer, 109 N. Y. 110; People v. Beckwith, 108 N. Y. 67; People v. Giblin, 115 N. Y. 196; 7 N. Y. Cr. Rep. 130; People v. Nolan, 7 N. Y. Cr. Rep. 134; People v. Lewis, 7 N. Y. Cr. Rep. 140; People v. Trezza, 125 N. Y. 740; 36 N. Y. St. Rep. 149; People v. Wilson, 141 N. Y. 185; People v. Barberi, 149 N. Y. 256; People v. Tuzckewitz, 149 N. Y. 240; People v. Totterman, 181 N. Y. 385; People v. Broncado, 188 N. Y. 150.

Homicide is justifiable when there is reasonable ground to apprehend an intent to do some great personal injury. People v. Carnel, 2 Edm. S. C. 78; People v. Crowe, 2 Edm. S. C. 152; People v. Schryer, 42 N. Y. 1; People v. Kelly, 94 N. Y. 533; 113 N. Y. 647; People v. McCarthy, 47 Hun, 491; People v. McGrath, 47 Hun, 325.

Length of time for the formation of a definite purpose to kill does not matter if it is sufficient. People v. Majone, 91 N. Y. 211; 1 N. Y. Cr. Rep. 94, aff'g 12 Abb. N. C. 187; 1 N. Y. Cr. Rep. 86; People v. Clark, 2 Edm. S. C. 273; People v. Sullivan, 2 Edm. S. C. 277; Leighton v. People, 88 N. Y. 117, aff'g 10 Abb. N. C. 261; People v. Kierman, 3 N. Y. Cr. Rep. 247; People v. Walworth, 4 N. Y. Cr. Rep. 335; People v. Beckwith, 103 N. Y. 361, aff'g 4 N. Y. Cr. Rep. 335; People v. Hawkins, 108 N. Y. 408; People v. Clark, 7 N. Y. 385; Fitzgerald v. People, 87 N. Y. 413.

Trial. People v. Jones, 99 N. Y. 667, aff'g 34 Hun, 620; People v. Kelly, 35 Hun, 295; People v. Rego, 36 Hun, 129; 3 N. Y. Cr. Rep. 275; People v. Donovan, 101 N. Y. 632; People v. Carpenter, 102 N. Y. 238; 1 N. Y. Cr. Rep. 49, 117; People v. Barber, 115 N. Y. 475; People v. Carlton, 115 N. Y. 618; People v. Stone, 117 N. Y. 480; People v. Carey, 148 N. Y. 476; People v. Unio, 149 N. Y. 317.

Questions for the jury to determine. People v. Kierman, 101 N. Y. 618; People v. Otto, 88 Hun, 97; People v. Osmond, 188 N. Y. 180.

If defendant intended to kill A., and in attempting to do so, kills B., he is guilty of murder in the first degree. People v. Osmond, 188 N. Y. 180.

Escape. People v. Flanigan, 174 N. Y. 356; People v. Huther, 184 N. Y. 237.

Witnesses. People v. Taylor, 43 Hun, 419; People v. Beckwith, 45 Hun, 422.

Corroboration of confession. People v. Barnes, 178 N. Y. 429.

Good character. People v. Bonier, 179 N. Y. 315.

Insanity. *People v. Barber*, 115 N. Y. 475; *People v. Webster*, 59 Hun, 306; 36 N. Y. St. Rep. 834; *People v. McElvaine*, 125 N. Y. 596; *People v. Pekarz*, 185 N. Y. 470.

Reasonable doubt. *People v. Downs*, 123 N. Y. 558; 34 N. Y. St. Rep. 282; 8 N. Y. Cr. Rep. 118; *People v. Stokes*, 58 N. Y. 177; *People v. Riordan*, 117 N. Y. 71.

§ 183a. Murder in the first degree.

A person who willfully, by loosening, removing or displacing a rail, or by any other interference, wrecks, destroys or so injures any car, tender, locomotive or railway train, or part thereof, while moving upon any railway in this state, whether operated by steam, electricity or other motive power, as to thereby cause the death of a human being, is guilty of murder in the first degree, and punishable accordingly.

Added by ch. 548 of 1897.

§ 184. Id., second degree.

Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation.

Kenny v. People, 31 N. Y. 330; *McKenna v. People*, 81 N. Y. 360; *People v. Thompson*, 41 N. Y. 1; *People v. Donovan*, 3 N. Y. Cr. Rep. 79; *Keefe v. People*, 40 N. Y. 348; *People v. Cassiano*, 30 Hun, 388; *People v. Battin*, 49 How. Pr. 392; *People v. Sheehan*, 49 Barb. 217; *People v. Sheriff*, 1 Park. 659; *People v. Hill*, 49 Hun, 432; 19 N. Y. St. Rep. 672; 3 N. Y. Supp. 564; *People v. Walworth*, 3 N. Y. Cr. Rep. 355; *People v. Cavanagh*, 32 How. Pr. 187; *People v. Conroy*, 33 Hun, 119; 2 N. Y. Cr. Rep. 247; *People v. Cole*, 2 N. Y. Cr. Rep. 113; *People v. Martin*, 33 App. Div. 283; *People v. Hoch*, 150 N. Y. 291; *People v. Smith*, 113 App. Div. 150; *People v. Koerner*, 117 App. Div. 40; *People v. Yoscow*, 117 App. Div. 75.

§ 185. Id., duel fought out of this state.

A person who, by previous appointment made within the state, fights a duel without the state, and in so doing inflicts a wound upon his antagonist, whereof the person injured dies; or who engages or participates in such a duel, as a second or assistant to either party, is guilty of murder in the second degree, and may be indicted, tried and convicted in any county of this state.

See §§ 16, 239, 240, 676, Penal Code, and § 133, Code Crim. Pro.

§ 186. Punishment of murder in first degree, how punished.

Murder in the first degree is punishable by death.

See §§ 491-509, Code Crim. Pro.

§ 187. Murder in second degree, how punished.

Murder in the second degree is punishable by imprisonment under an indeterminate sentence, the minimum of which shall be twenty years and the maximum of which shall be for the offender's natural life; and any person serving a term of imprisonment for life, under an original sentence for murder in the second degree, when this section, as amended, takes effect, shall be deemed to be thereafter serving under such an indeterminate sentence.

Am'd by ch. 738 of 1907.

§ 188. Manslaughter defined.

In a case other than one of those specified in the sections 183, 184 and 185, homicide, not being justifiable or excusable, is manslaughter.

People v. Beckwith, 103 N. Y. 360; 5 N. Y. Cr. Rep. 228; 3 N. Y. St. Rep. 104; *Evans v. People*, 49 N. Y. 86; *People v. Cole*, 2 N. Y. Cr. Rep.

118; *People v. Butler*, 3 Park. 377; *People v. Hammill*, 2 Park. 228; *People v. Buddensieck*, 108 N. Y. 487; *People v. Rego*, 36 Hun, 120; *People v. Hill*, 49 Hun, 432; 19 N. Y. St. Rep. 672; 3 N. Y. Supp. 564; *People v. McCarthy*, 110 N. Y. 316; 18 N. Y. St. Rep. 267; *People v. Sullivan*, 7 N. Y. 396; *People v. Tannan*, 4 Park. 514; *Wilson v. People*, 4 Park. 619; *People v. Fuller*, 2 Park. 16; *McCann v. People*, 6 Park. 620; *People v. Walts*, 50 How. 204; *People v. Cole*, 2 N. Y. Cr. Rep. 113; *People v. Austin*, 1 Park. 291; *People v. Fitzsimmons*, 69 N. Y. St. Rep. 195.

§ 189. Id.; in the first degree.

Such homicide is manslaughter in the first degree, when committed without a design to effect death, either

1. By a person engaged in committing, or attempting to commit, a misdemeanor, affecting the person or property, either of the person killed, or of another; or

2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

On what conviction may be found. *People v. McDonnell*, 92 N. Y. 657; 1 N. Y. Cr. Rep. 366.

Character. *People v. Van Gaasbeck*, 118 App. Div. 511.

Subd. 1. *People v. Rector*, 19 N. Y. 569.

Subd. 2. *People v. Sheriff*, 1 Park. 669; *Buel v. People*, 78 N. Y. 492; *People v. Johnson*, 2 Park. 291; *People v. Sullivan*, 7 N. Y. 396; *People v. Hammill*, 2 Park. 223; *Foster v. People*, 50 N. Y. 598.

See also *People v. McDonald*, 49 Hun, 68; 1 N. Y. Supp. 704; 8 N. Y. St. Rep. 494; *Darry v. People*, 10 N. Y. 120; 2 Park. 606; *People v. McKeon*, 31 Hun, 449; *People v. Butler*, 3 Park. 377; *People v. Rego*, 36 Hun, 130; 8 N. Y. Cr. Rep. 276; *People v. Wester*, 68 Hun, 21; 52 N. Y. St. Rep. 240; 22 N. Y. Supp. 641; *People v. Martin*, 33 App. Div. 283; *People v. Cole*, 4 Park. 35; *People v. Carlton*, 115 N. Y. 624; 26 N. Y. St. Rep. 434; *People v. Kennedy*, 22 N. Y. Supp. 269; 51 N. Y. St. Rep. 518; *People v. Fitzsimmons*, 69 N. Y. St. Rep. 195; *People v. Mallon*, 116 App. Div. 425.

§ 190. Killing unborn quick child.

The willful killing of an unborn quick child, by any injury committed upon the person of the mother of such child, is manslaughter in the first degree.

See §§ 294-297, post.

Evans v. People, 49 N. Y. 88; *Eckhart v. People*, 83 N. Y. 462. See 33 Alb. L. J. 149.

§ 191. Id.; by administering drugs, etc.

A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.

See §§ 294, 297, 318, post.

Evans v. People, 49 N. Y. 88; *Lohman v. People*, 1 N. Y. 379; 2 Barb. 216; *People v. Davis*, 56 N. Y. 95; *Davis v. People*, 2 T. & C. 212; *Hunt v. People*, 3 Park. 569; *Mongeon v. People*, 55 N. Y. 618, 615; 2 T. & C.

128; People v. Stockham, 1 Park. 424; People v. McGonegal, 42 N. Y. St. Rep. 313; 17 N. Y. Supp. 148.

§ 192. Manslaughter in first degree, how punished.

Manslaughter in the first degree is punishable by imprisonment for a term not exceeding twenty years.

Am'd by ch. 662 of 1892.

§ 193. Manslaughter in second degree.

Such homicide is manslaughter in the second degree, when committed without a design to effect death, either

1. By a person committing or attempting to commit a trespass, or other invasion of a private right, either of the person killed, or of another, not amounting to a crime; or
2. In the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual; or
3. By any act, procurement or culpable negligence of any person, which, according to the provisions of this chapter, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree.

Am'd by ch. 23 of 1887.

See § 202, post.

Evidence of information to the prisoner, of his wife's adultery is admissible to show that the murder was committed in a state of frenzy. Sanchez v. People, 22 N. Y. 147.

Subd. 2. People v. Rego, 36 Hun, 130; 3 N. Y. Cr. 275; People v. Wilson, 4 Park. 619.

Subd. 3. People v. Welch, 74 Hun, 474; People v. Buddensieck, 103 N. Y. 496; 5 N. Y. Cr. Rep. 69; 3 N. Y. St. Rep. 664, aff'g 4 N. Y. Cr. Rep. 268; 1 N. Y. St. Rep. 438; People v. Cole, 4 Park. 35; People v. McCarthy, 110 N. Y. 309, aff'g 47 Hun, 491; 14 N. Y. St. Rep. 415; People v. McGrath, 47 Hun, 326; 6 N. Y. Cr. Rep. 153; 13 N. Y. St. Rep. 359; People v. Quimby, 113 App. Div. 793.

Evidence insufficient to sustain a conviction of manslaughter in the second degree. People v. Kerrigan, 84 Hun, 609.

See also People v. Melius, 1 N. Y. Cr. Rep. 39.

Manslaughter and assault first degree distinguished. People v. Huson, 114 App. Div. 693.

§ 194. Woman taking drugs, etc.

A woman quick with child, who takes or uses, or submits to the use of any drug, medicine, or substance, or any instrument or other means with intent to produce her own miscarriage, unless the same is necessary to preserve her own life, or that of the child whereof she is pregnant, if the death of such child is thereby produced, is guilty of manslaughter in the second degree.

See §§ 294, 295, 318, post.

§ 195. By negligent use of machinery.

A person who, by any act of negligence or misconduct in a business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind, intrusted to his care, or under his control, or by any unlawful, negligent or reckless act, not specified by or coming within the foregoing provisions of this chapter, or the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

See § 193, subd. 3, and § 196, Penal Code.

People v. Buddensieck, 103 N. Y. 487; 8 N. Y. St. Rep. 664; 5 N. Y. Cr. Rep. 70, aff'g 4 N. Y. Cr. Rep. 268; 1 N. Y. St. Rep. 436; Wilson v. People, 4 Park. 641; People v. Austin, 1 Park. 154; Thomas v. Winchester, 6 N. Y. 397, 409; People v. Schryver, 42 N. Y. 1, 5.

§ 196. Owner of animals.

If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, and not confined, kills a human being, who has taken all the precautions which the circumstances permitted, to avoid the animal, the owner is guilty of manslaughter in the second degree.

See §§ 195, 640, subd. 11, Penal Code.

§ 197. Killing by overloading passenger vessel.

A person navigating a vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board the vessel, that, by means thereof, the vessel sinks, or is overset or injured, and thereby a human being is drowned, or otherwise killed, is guilty of manslaughter in the second degree.

See § 359, post.

§ 198. Liability of persons in charge of steamboats.

A person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

See §§ 380-382, post.

§ 199. Liability of persons in charge of steam engines.

An engineer or other person, having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, who willfully, or from ignorance or gross neglect, creates or allows to be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident, whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

See §§ 380-382, 424, post.

§ 200. Liability of physicians.

A physician or surgeon, or person practicing as such, who, being in a state of intoxication, without a design to effect death, administers a poisonous drug or medicine, or does any other act as a

physician or surgeon, to another person, which produces the death of the latter, is guilty of manslaughter in the second degree.

See § 357, post.

§ 201. Liability of persons making or keeping gunpowder contrary to law.

A person who makes or keeps gunpowder or any other explosive substance within a city or village, in any quantity or manner prohibited by law, or by ordinance of the city or village, if any explosion thereof occurs, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

See §§ 380, 636, 645, post.

§ 202. Punishment of manslaughter in second degree.

Manslaughter in the second degree is punishable by imprisonment for a term not exceeding fifteen years, or by a fine of not more than one thousand dollars, or by both.

Am'd by ch. 662 of 1892.

§ 203. Homicide, when excusable.

Homicide is excusable when committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with ordinary caution, and without any unlawful intent.

See § 223, post.

People v. Carlton, 115 N. Y. 618; 26 N. Y. St. Rep. 436; People v. Kelly, 113 N. Y. 649; 7 N. Y. Cr. Rep. 48; 22 N. Y. St. Rep. 969; People v. Fitzsimmons, 69 N. Y. St. Rep. 195.

§ 204. Justifiable homicide.

Homicide is justifiable when committed by a public officer, or a person acting by his command and in his aid and assistance, either

1. In obedience to the judgment of a competent court; or
2. Necessarily, in overcoming actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty; or

3. Necessarily, in retaking a prisoner who has committed, or has been arrested for, or convicted of a felony, and who has escaped or has been rescued, or in arresting a person who has committed a felony and is fleeing from justice; or in attempting by lawful ways and means to apprehend a person for a felony actually committed, or in lawfully suppressing a riot, or in lawfully preserving the peace.

People v. McCarthy, 110 N. Y. 309, aff'g 47 Hun, 491; 14 N. Y. St. Rep. 415; Conraddy v. People, 5 Park. 234; People v. Carlton, 115 N. Y. 623; 26 N. Y. St. Rep. 436; People v. Sullivan, 7 N. Y. 396; People v. Walworth, 4 N. Y. Cr. Rep. 355; People v. Pallister, 51 N. Y. St. Rep. 727; People v. Willett, 36 Hun, 511; 3 N. Y. Cr. Rep. 334.

§ 205. Id.

Homicide is also justifiable when committed, either

1. In the lawful defense of the slayer, or of his or her husband, wife, parent, child, brother, sister, master or servant, or of any

other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer, or to any such person, and there is imminent danger of such design being accomplished; or

2. In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is.

See §§ 26, 203 and 223, Penal Code.

What will not justify. *Evers v. People*, 63 N. Y. 625, aff'd 8 Hun, 716;

Real v. People, 42 N. Y. 270; 55 Barb. 515; 8 Abb. Pr. (N. S.) 814.

When act is justifiable. *Patterson v. People*, 46 Barb. 625; *People v. Austin*, 1 Park. 154; *Shorter v. People*, 2 N. Y. 163.

See also *People v. Sullivan*, 7 N. Y. 396; *People v. Downs*, 56 Hun, 11; 29 N. Y. St. Rep. 121; 7 N. Y. Cr. Rep. 487; 8 N. Y. Supp. 524; *People v. Carlton*, 115 N. Y. 623; 26 N. Y. St. Rep. 436; *People v. Walworth*, 4 N. Y. Cr. Rep. 378; *People v. Druse*, 103 N. Y. 655; 5 N. Y. Cr. Rep. 10; 8 N. Y. St. Rep. 617; *People v. Kennedy*, 51 N. Y. St. Rep. 813; *People v. Webster*, 52 N. Y. St. Rep. 241; 22 N. Y. Supp. 642; *People v. Lyons*, 6 N. Y. Cr. Rep. 110; *People v. Johnson*, 139 N. Y. 363; *People v. Hess*, 8 App. Div. 146.

CHAPTER III.

Maiming.

- Sec. 206. Maiming defined; how punished.**
 207. Maiming one's self to escape performance of a duty.
 208. Maiming one's self to obtain alms.
 209. What injury may constitute maiming.
 210. Subsequent recovery of injured person, when a defense.

§ 206. Maiming defined, how punished.

A person who willfully, with intent to commit felony, or to injure, disfigure, or disable, inflicts upon the person of another an injury which,

1. Seriously disfigures his person by any mutilation thereof; or
2. Destroys, or disables any member or organ of his body; or
3. Seriously diminishes his physical vigor by the injury of any member or organ;

Is guilty of maiming, and is punishable by imprisonment for a term not exceeding fifteen years. The infliction of the injury is presumptive evidence of the intent.

Am'd by ch. 662 of 1892.

Foster v. People, 50 N. Y. 598; Burke v. People, 4 Hun, 484; Tully v. People, 67 N. Y. 20; Godfrey v. People, 63 N. Y. 207.

§ 207. Maiming one's self to escape performance of a duty.

A person who, with design to disable himself from performing a legal duty, existing or anticipated, inflicts upon himself an injury, whereby he is so disabled is guilty of a felony.

§ 208. Maiming one's self to obtain alms.

A person who inflicts upon himself an injury, such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, in order to excite sympathy, or to obtain alms, or any charitable relief, is guilty of a felony.

§ 209. What injury may constitute maiming.

To constitute maiming, it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

§ 210. Subsequent recovery of injured person, when a defense.

Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound, that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming can be had; but the defendant may be convicted of assault in any degree.

CHAPTER IV.

Kidnapping.

- Sec. 211. Kidnapping defined.**
212. Indictment, where triable.
 213. Effect of consent of injured person.
 214. Selling services of person.
 215. Removing from this state persons held to service in another state.
 216. Penalty imposed on judicial officers.

§ 211. Kidnapping defined.

A person who willfully,

1. Seizes, confines, inveigles, or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of the state, or to be sold as a slave, or in any way held to service or kept or detained, against his will; or

2. Leads, takes, entices away, or detains a child under the age of sixteen years with intent to keep or conceal it from its parent, guardian, or other person having the lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article about or on the person of the child or,

3. Abducts, entices, or by force or fraud unlawfully takes, or carries away another, at or from a place without the state, or procures, advises, aids, or abets such an abduction, enticing, taking, or carrying away, and afterward sends, brings, has, or keeps such person, or causes him to be kept or secreted within this state;

Is guilty of kidnapping, and is punishable by imprisonment for not more than twenty-five years.

Am'd by ch. 145 of 1888, and ch. 683 of 1907.

See § 282, post.

Evidence. People v. De Leon, 109 N. Y. 228; 8 N. Y. Cr. Rep. 78; 14 N. Y. St. Rep. 847; 18 N. Y. St. Rep. 588, aff'g 47 Hun, 308.

What is. Hadden v. People, 25 N. Y. 373; Mandeville v. Guernsey, 51 Barb. 99; People v. Ruloff, 2 Park. 126; People v. Merrill, 14 N. Y. 76; 2 Park. 590.

Subd. 2. People v. Tinsdale, 10 Barb. (N. S.) 374; Kauffman v. People, 11 Hun, 82; People v. Navagh, 41 Hun, 188; 4 N. Y. Cr. Rep. 295; 4 N. Y. St. Rep. 162; People v. Brunnell, 18 How. 443; Carpenter v. People, 8 Barb. 603.

See also People v. Fitzpatrick, 57 Hun, 461; 32 N. Y. St. Rep. 1013; 8 N. Y. Cr. Rep. 85; People v. Camp, 139 N. Y. 92, aff'g 66 Hun, 532; 21 N. Y. Supp. 742; 51 N. Y. St. Rep. 35; People v. Frink, 41 Hun, 188; 4 N. Y. St. Rep. 162; People v. Milne, 4 N. Y. Cr. Rep. 295; Dehn v. Mandeville, 68 Hun, 337; 52 N. Y. St. Rep. 282; People v. Hildebrandt, 16 Misc. 196.

§ 212. Indictment, where triable.

An indictment for kidnapping may be tried either in the county in which the offense was committed, or in any county through or in which the person kidnapped or confined was taken or kept, while under confinement or restraint.

§ 213. Effect of consent of injured person.

Upon a trial for a violation of this chapter, the consent thereto of the person kidnapped or confined shall not be a defense, unless it appears satisfactorily to the jury that such person was above the age of twelve years, and that the consent was not extorted by threats or duress.

People v. De Leon, 109 N. Y. 230; 8 N. Y. Cr. Rep. 80; 14 N. Y. St. Rep. 847, aff'd 47 Hun, 312; 8 N. Y. Cr. Rep. 78; 18 N. Y. St. Rep. 588.

§ 214. Selling services of person.

A person who, within this state or elsewhere, sells or in any manner transfers, for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnapped in or from this state, is punishable by imprisonment in a state prison not exceeding ten years.

People v. Merrill, 14 N. Y. 75; 2 Park. 590.

§ 215. Removing from this state persons held to service in another state.

A person claiming that he or another is entitled to the services of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by special statute, takes, or removes, or willfully does any act tending towards removing from this state any such person, is guilty of felony, punishable by imprisonment in the state prison not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

§ 216. Penalty imposed on judicial officers.

A judge, or other public officer of this state who grants or issues any warrant, certificate or other process, in any proceeding for the removal from this state of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of the statute of this state, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

CHAPTER V.

Assaults.

Sec. 217. Assault in first degree defined.

- 218. *Id.*, in second degree.
- 219. *Id.*, in third degree.
- 220. Assault in first degree, how punished.
- 221. *Id.*, in second degree.
- 222. *Id.*, in third degree.
- 223. Use of force or violence, declared not unlawful, etc.

§ 217. Assault in first degree defined.

A person who, with an intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another,

1. Assails another with a loaded fire-arm, or any other deadly weapon, or by any other means or force likely to produce death; or
2. Administers to or causes to be administered to or taken by another, poison, or any other destructive or noxious thing, so as to endanger the life of such other;

Is guilty of assault in the first degree.

When intent may be inferred from circumstances. *Foster v. People*, 50 N. Y. 598; *O'Leary v. People*, 18 How. 187; *People v. Davis*, 4 N. Y. 61; 18 How. 134; *People v. Vinegar*, 2 Park. 224; *Lanahan v. People*, 8 Hun. 164; *People v. Shaw*, 1 Park. 327.

Evidence. *People v. Gibbs*, 1 N. Y. Cr. Rep. 473; *People v. Odell*, 14 Week. Dig. 403.

What is a dangerous weapon. *People v. Carlton*, 115 N. Y. 624; *People v. Whedon*, 2 N. Y. Cr. Rep. 320; *People v. Cavanaugh*, 62 How. 187; *Filkins v. People*, 69 N. Y. 101.

Subd. 1. *People v. Ryan*, 55 Hun. 214; 7 N. Y. Cr. Rep. 450; 27 N. Y. St. Rep. 918; 8 N. Y. Supp. 242; *People v. Sullivan*, 4 N. Y. Cr. Rep. 197; *People v. Cavanaugh*, 62 How. 187; *Mulligan v. People*, 5 Park. 105; *People v. Dartmore*, 48 Hun. 322; 15 N. Y. St. Rep. 839; 2 N. Y. Supp. 311; *Filkins v. People*, 69 N. Y. 101; *People v. Connor*, 53 Hun. 353.

Subd. 2. *People v. Burgess*, 45 Hun. 157; 5 N. Y. Cr. Rep. 514; 10 N. Y. St. Rep. 21.

See also *People v. Rockhill*, 74 Hun. 243; *People v. Ryan*, 55 Hun. 215; 27 N. Y. St. Rep. 917; 7 N. Y. Cr. Rep. 450; 8 N. Y. Supp. 242; *People v. Stout*, 81 Hun. 338; *People v. Hannan*, 9 Misc. 604; *People v. Dartmore*, 48 Hun. 322; 2 N. Y. Supp. 311; 15 N. Y. St. Rep. 839; *Matter of Gray*, 2 N. Y. Cr. Rep. 303; *People v. Maschke*, 2 N. Y. Cr. Rep. 306; *People v. O'Connell*, 60 Hun. 118; 38 N. Y. St. Rep. 108; 14 N. Y. Supp. 485; *People v. Terrell*, 33 N. Y. St. Rep. 370; 11 N. Y. Supp. 365. Manslaughter and assault first degree distinguished. *People v. Huson*, 114 App. Div. 693.

§ 218. Id., in second degree.

A person who, under circumstances not amounting to the crime specified in the last section,

1. With intent to injure, unlawfully administers to, or causes to be administered to, or taken by, another, poison, or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers to or causes to be ad-

ministered to, or taken by another, chloroform, ether, laudanum, or any other intoxicating narcotic, or anaesthetic agent; or

3. Willfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or

4. Willfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or

5. Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person;

Is guilty of assault in the second degree.

Am'd by ch. 884 of 1882.

See §§ 278, 358, 447, post.

Indictment. People v. Cooper, 3 N. Y. Cr. Rep. 117.

Is a felony. People v. Cole, 2 N. Y. Cr. Rep. 112; People v. Sweeney, 41 Hun, 340; 4 N. Y. Cr. Rep. 283.

Subd. 3. People v. Irving, 95 N. Y. 541, aff'g 31 Hun, 615; 2 N. Y. Cr. Rep. 47; People v. Cavanaugh, 62 How. 187.

Subd. 4. People v. Cole, 2 N. Y. Cr. Rep. 112; People v. Murray, 54 Hun, 407; 27 N. Y. St. Rep. 84; 47 N. Y. St. Rep. 84; 7 N. Y. Supp. 543; People v. Sullivan, 4 N. Y. Cr. Rep. 194; People v. Sweeney, 41 Hun, 332; 4 N. Y. Cr. Rep. 275; Filkins v. People, 69 Hun, 101; People v. Connor, 53 Hun, 353; 26 N. Y. St. Rep. 138; 7 N. Y. Cr. Rep. 470; 6 N. N. Y. Supp. 220; People v. Ryan, 55 Hun, 214; 27 N. Y. St. Rep. 918; 7 N. Y. Cr. Rep. 450; 28 N. Y. St. Rep. 490; 8 N. Y. Supp. 244; People v. Terrell, 33 N. Y. St. Rep. 370; 11 N. Y. Supp. 365; People v. Hickey, 11 Hun, 631.

Subd. 5. People v. Clark, 3 N. Y. Cr. Rep. 280; People v. Bransby, 32 N. Y. 525; People v. Hale, 2 N. Y. Cr. Rep. 134; People v. Quinn, 50 Barb. 128; Hays v. People, 1 Hill, 361; People v. Huther, 184 N. Y. 237.

Right to resist. People v. Dankberg, 91 App. Div. 67.

See also People v. Shanley, 40 Hun, 477; 4 N. Y. Cr. Rep. 472; People v. Cooper, 3 N. Y. Cr. Rep. 117; People v. Baker, 89 N. Y. 460; People v. Dartmore, 48 Hun, 322; 2 N. Y. Supp. 311; 15 N. Y. St. Rep. 839; People v. Blute, 48 N. Y. St. Rep. 307; People v. Barber, 74 Hun, 369; People v. Hannan, 9 Misc. 604; People v. Morehouse, 25 N. Y. St. Rep. 294; People v. Aldrich, 33 N. Y. St. Rep. 792; 11 N. Y. Supp. 465; People v. Maschke, 2 N. Y. Cr. Rep. 306; Matter of Gray, 2 N. Y. Cr. Rep. 303; People v. Hartley, 51 N. Y. St. Rep. 804; People v. Smith, 113 App. Div. 396.

§ 219. Id., in third degree.

A person who commits an assault, or an assault and battery, not such as is specified in the foregoing sections of this chapter, is guilty of assault in the third degree.

Assault. People v. Griffin, 27 Hun, 595; People v. Hale, 1 N. Y. Cr. Rep. 532; People v. Moore, 50 Hun, 356; People v. Ryan, 55 Hun, 214; People v. McKenzie, 6 App. Div. 199; 38 N. Y. Supp. 951.

Appeal. People v. Griffin, 27 Hun, 595; People v. Norton, 2 N. Y. Cr. Rep. 322; People v. Sullivan, 4 N. Y. Cr. Rep. 193; People v. Snyder, 44 Hun, 193; People v. Connor, 53 Hun, 352; 6 N. Y. Supp. 220.

Burden of Proof. O'Connell v. People, 87 N. Y. 377.

Arrest. People v. Shanley, 40 Hun, 477; People v. McGann, 43 Hun, 55; People v. Murray, 54 Hun, 406.

Assault with intent to commit rape. People v. Blute, 48 N. Y. St. Rep. 307; 20 N. Y. Supp. 455; People v. Brockett, 85 Hun, 188; 65 N. Y. St. Rep. 667; 32 N. Y. Supp. 511.

Assault upon a police officer. *People v. Barber*, 74 Hun, 368; 56 N. Y. St. Rep. 304; 26 N. Y. Supp. 417.

Where prisoner is convicted of "the misdemeanor of assault and battery." It is an assault in the third degree. *People v. Maschke*, 2 N. Y. Cr. Rep. 168; 307, note.

Evidence. *People v. Odell*, 14 Week. Dig. 403; *People v. Gibbs*, 1 N. Y. Cr. Rep. 472; *Sawyer v. People*, 91 N. Y. 867; *O'Connell v. People*, 87 N. Y. 337; *People v. Gibbs*, 93 N. Y. 470; *People v. Van Vechten*, 2 N. Y. Cr. Rep. 291; *People v. Persons*, 2 N. Y. Cr. Rep. 114; *People v. Whedon*, 2 N. Y. Cr. Rep. 318; *People v. Augsbury*, 97 N. Y. 501; *People v. Taylor*, 8 N. Y. Cr. Rep. 297; *People v. Burgess*, 45 Hun, 157; *People v. Moore*, 50 Hun, 356; *People v. Ryan*, 55 Hun, 214; *People v. Bracco*, 69 Hun, 206; 53 N. Y. St. Rep. 227; 23 N. Y. Supp. 505; *People v. Parker*, 68 Hun, 130; 53 N. Y. St. Rep. 411; 23 N. Y. Supp. 704; *People v. Irving*, 2 N. Y. Cr. Rep. 171.

Insufficient evidence. *People v. Curren*, 2 App. Div. 374; 73 N. Y. St. Rep. 484; 27 N. Y. Supp. 803.

What constitutes interfering with a team. *People v. Moore*, 50 Hun, 356; 20 N. Y. St. Rep. 1; 8 N. Y. Supp. 159.

Pointing a gun. *People v. Moorehouse*, 6 N. Y. Supp. 763; *People v. Ryan*, 55 Hun, 214; 27 N. Y. St. Rep. 916; 7 N. Y. Cr. Rep. 448; 8 N. Y. Supp. 241.

Stabbing an officer. *People v. Murray*, 54 Hun, 406; 27 N. Y. St. Rep. 84; 7 N. Y. Supp. 548.

An attempt to assault defined. *People v. O'Connell*, 60 Hun, 109; 38 N. Y. St. Rep. 107; 14 N. Y. Supp. 485

Stabbing, while intoxicated, a person with a knife, though the assaulted testified the act was accidental. *People v. Hartley*, 51 N. Y. St. Rep. 804; 22 N. Y. Supp. 295.

Question whether a pistol loaded with a blank cartridge was liable to produce bodily harm, is one of fact for the jury to determine. *People v. McKenzie*, 6 App. Div. 199; 39 N. Y. Supp. 361.

See *People v. Moran*, 123 N. Y. 254.

Intent. *People v. Hale*, 1 N. Y. Cr. Rep. 532; *People v. Clark*, 8 N. Y. Cr. Rep. 280; *People v. Cooper*, 3 N. Y. Cr. Rep. 117; *People v. Sullivan*, 4 N. Y. Cr. Rep. 198; *People v. Terrell*, 33 N. Y. St. Rep. 368; 11 N. Y. Supp. 364; *People v. Brockett*, 85 Hun, 138; 65 St. Rep. 667; 32 N. Y. Supp. 511.

Sentence. *People ex rel. Devoe v. Kelly*, 2 N. Y. Cr. Rep. 428, rev'd 32 Hun, 536; *Matter of Hoffman*, 1 N. Y. Cr. Rep. 484; *People v. Graves*, 31 Hun, 382.

Indictment. *People v. Whedon*, 2 N. Y. Cr. Rep. 318; *People v. Cooper*, 3 N. Y. Cr. Rep. 117; *People v. Taylor*, 3 N. Y. Cr. Rep. 297; *People v. Sullivan*, 4 N. Y. Cr. Rep. 198; *People v. Cooper*, 3 N. Y. Cr. Rep. 117.

Trial. *People v. Kelly*, 94 N. Y. 526; *People v. Osterhout*, 34 Hun, 280; *People v. Taylor*, 3 N. Y. Cr. Rep. 297; *People v. Palmer*, 109 N. Y. 413, aff'd 48 Hun, 397; *People v. Connor*, 53 Hun, 352; 6 N. Y. Supp. 220; *People v. Ryan*, 55 Hun, 214; *People v. Miller*, 50 N. Y. St. Rep. 471; 21 N. Y. Supp. 388, aff'd, 137 N. Y. 569.

Witnesses. *People v. Kelly*, 94 N. Y. 526.

Constitutional law. *People v. Palmer*, 107 N. Y. 413.

§ 220. Assault in first degree, how punished.

Assault in the first degree is punishable by imprisonment for a term not exceeding ten years.

Am'd by ch. 662 of 1892.

People v. O'Connell, 60 Hun, 118; 14 N. Y. Supp. 485; 38 N. Y. St. Rep. 106; *People v. Sage*, 17 Misc. 713

§ 221. Id., in second degree.

Assault in the second degree is punishable by imprisonment in a penitentiary or state prison for a term not exceeding five years, or by a fine of not more than one thousand dollars, or both.

Am'd by ch. 662 of 1892.

See § 5, ante, and § 56, subd. 2, Code Crim. Pro.

People v. Terrell, 33 N. Y. St. Rep. 369; 11 N. Y. Supp. 365; People v. Cole, 2 N. Y. Cr. Rep. 112; People v. Sweeney, 41 Hun, 340; 4 N. Y. Cr. Rep. 283; People v. Stock, 28 App. Div. 567; People v. Sage, 18 App. Div. 186.

§ 222. Id., in third degree.

Assault in the third degree is punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or both.

See § 15, ante. See Code Civ. Pro., § 56.

People v. Maschke, 2 N. Y. Cr. Rep. 306; 19 Week. Dig. 205; People v. Van Vechten, 19 Week. Dig. 291; People v. Sutton, 24 N. Y. St. Rep. 726; 6 N. Y. Supp. 96; Matter of Bray, 34 N. Y. St. Rep. 642; 12 N. Y. Supp. 367; People v. Kelly, 97 N. Y. 212; 2 N. Y. Cr. Rep. 432, aff'g 32 Hun, 540; 19 Week. Dig. 205; People v. Cooper, 4 N. Y. Cr. Rep. 119; 65 N. Y. St. Rep. 164.

§ 223. Use of force or violence, declared not unlawful, etc.

To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of a legal duty; or by any other person assisting him or acting by his direction;
2. When necessarily committed by any person in arresting one who has committed a felony, and delivering him to a public officer competent to receive him in custody;
3. When committed either by the party about to be injured or by another person in his aid or defense, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense;
4. When committed by a parent or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, and the force or violence used is reasonable in manner and moderate in degree;
5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from a carriage, railway car, vessel or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force or violence used is not more than sufficient to expel the offending passenger, with a reasonable regard to his personal safety;

6. When committed by any person in preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or in enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

See §§ 26, 203, 206, 377, Penal Code; §§ 83, 168, 183, Code Crim. Pro.

Subd. 1. What force a peace officer may use. *Hager v. Danforth*, 20 Barb. 16; *Conraddy v. People*, 5 Park. 234.

Subd. 2. What force a party without process may use to arrest an offender. *People v. Adler*, 3 Park. 249.

Subd. 3. Party assailed, what force he may use in defense. *People v. Lamb*, 54 Barb. 342; *Wood v. Phillips*, 43 N. Y. 152; *Patterson v. People*, 46 Barb. 625; *Evers v. People*, 63 N. Y. 625, aff'g 3 Hun, 716; *Carey v. People*, 45 Barb. 282; *People v. Cole*, 4 Park. 35; *Gyre v. Culver*, 47 Barb. 592; *Shorter v. People*, 2 N. Y. 193; *Ruloff v. People*, 45 N. Y. 213; 5 Lans. 261; 11 Abb. N. S. 245; *Harrington v. People*, 6 Barb. 607; *People v. Sullivan*, 7 N. Y. 396; *People v. Austin*, 1 Park. 154.

Subd. 4. What force parent or agent may use. *Hernandez v. Carnobelli*, 4 Duer, 642; 10 How. Pr. 433; *Starr v. Lifchild*, 40 Barb. 541.

Subd. 5. When conductor may use sufficient force to eject passenger who refuses to pay his fare. *People v. Gibson*, 3 Park. 234; *Sandford v. Railroad Co.*, 23 N. Y. 343; *Higgins v. Railroad Co.*, 46 N. Y. 23; *Hibbard v. N. Y. & E. R. Co.*, 15 N. Y. 455; *Pease v. Railroad Co.*, 101 N. Y. 370; *Priest v. Railroad Co.*, 10 Abb. N. S. 60; 40 How. Pr. 456.

See also *Crowley v. Miller*, 19 Week. Dig. 262; *Howe v. Oldham*, 52 N. Y. St. Rep. 734. See note, 21 Abb. N. C. 26.

CHAPTER VI.

Robbery.

- Sec. 224. Robbery defined.
 225. How force or fear must be employed.
 226. Degree of force immaterial.
 227. Taking property secretly, not robbery.
 228. Robbery in first degree.
 229. Id., second degree.
 230. Id., third degree.
 231. Punishment of robbery in first degree.
 232. Id., in second degree
 233. Id., in third degree.

§ 224. Robbery defined.

Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery.

Force is an essential ingredient of robbery. *Mahoney v. People*, 3 Hun, 202. Threats may be means by which property is extorted. *People v. McDaniels*, 1 Park, 198.

Snatching an article is not robbery. *People v. Hall*, 6 Park, 642; *McCloskey v. People*, 5 Park, 299.

Jury must determine question of felonious intent. *Hope v. People*, 83 N. Y. 426; 11 Week. Dig. 386; *People v. Hall*, 6 Park, 642; *People v. McGinty*, 24 Hun, 62.

Indictment. *Quinlan v. People*, 6 Park, 9.

See also *Brooks v. People*, 49 N. Y. 436; *People v. Glynn*, 54 Hun, 333; 27 N. Y. St. Rep. 27; *People v. Baroness*, 61 Hun, 576; 8 N. Y. Cr. Rep. 234; 41 N. Y. St. Rep. 659; 16 N. Y. Supp. 438, rev'd, 45 N. Y. St. Rep. 248; 8 N. Y. Cr. Rep. 376; *People v. O'Neil*, 6 N. Y. Cr. Rep. 226; *Bloomer v. People*, 3 Keyes, 9; *People v. Loop*, 3 Park, 559; *People v. Du Veau*, 105 App. Div. 381.

§ 225. How force or fear must be employed.

To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery.

Hope v. People, 11 Week. Dig. 386; *McGinty v. People*, 11 Week. Dig. 510; *McCloskey v. People*, 5 Park, 299; *People v. Foley*, 9 N. Y. St. Rep. 25; 27 Week. Dig. 217; *Mahoney v. People*, 3 Hun, 202; *People v. McGinty*, 24 Hun, 62; 11 Week. Dig. 510; *People v. Glynn*, 54 Hun, 334; 27 N. Y. St. Rep. 27; *Hope v. People*, 83 N. Y. 418; 11 Week. Dig. 386.

§ 226. Degree of force immaterial.

When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

Mahoney v. People, 59 N. Y. 659, aff'g 3 Hun, 202; *People v. Foley*, 9 N. Y. St. Rep. 25; 27 Week. Dig. 217; *People v. McGinty*, 24 Hun, 62.

§ 227. Taking property secretly, not robbery.

The taking of property from the person of another is robbery, when it appears that although the taking was fully completed without his knowledge, such knowledge was prevented by the use of force or fear.

McCloskey v. People, 5 Park. 299; *People v. Hall*, 6 Park. 642.

§ 228. Robbery in first degree.

An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this chapter, is robbery in the first degree, when committed by a person,

1. Being armed with a dangerous weapon; or
2. Being aided by an accomplice actually present; or
3. When the offender inflicts grievous bodily harm or injury upon the person from whose possession, or in whose presence, the property is taken, or upon the wife, husband, servant, child, or inmate of the family of such person, or any one in his company at the time, in order to accomplish the robbery.

People v. Parshall, 6 Park. 129; *Carpenter v. People*, 8 Barb. 608; *People v. McInerney*, 5 N. Y. Cr. Rep. 48; 4 N. Y. St. Rep. 598; *People v. Joyce*, 4 N. Y. Cr. Rep. 342; *People v. Du Veau*, 105 App. Div. 381.

§ 229. Id., second degree.

Such unlawful taking or compulsion when accomplished by force or fear, in a case specified in the foregoing sections of this chapter, but not under circumstances amounting to robbery in the first degree, is robbery in the second degree, when accomplished either

1. By the use of violence; or
2. By putting the person robbed in fear of immediate injury to his person or that of some one in his company.

People v. McDaniels, 1 Park. 198; *People v. Hofelder*, 5 N. Y. Cr. Rep. 179; 5 N. Y. St. Rep. 488.

§ 230. Id., third degree.

A person who robs another, under circumstances not amounting to robbery in the first or second degree, is guilty of robbery in the third degree.

§ 231. Punishment of robbery in first degree.

Robbery in the first degree is punishable by imprisonment for a term not exceeding twenty years.

Am'd by ch. 662 of 1892.

§ 232. Id., in second degree.

Robbery in the second degree is punishable by imprisonment for a term not exceeding fifteen years.

Am'd by ch. 662 of 1892.

§ 233. Id., in third degree.

Robbery in the third degree is punishable by imprisonment for not more than ten years.

CHAPTER VII.**Duels and Challenges.**

- Sec. 234. Dueling, defined and punished.**
- 235. Challenger, abettor, etc.
 - 236. Challenge defined.
 - 237. Attempts to induce a challenge
 - 238. Posting for not fighting.
 - 239. Duel outside of state.
 - 240. Where such persons may be indicted and tried.
 - 241. Witnesses.

§ 234. Dueling, defined and punished.

A person who fights a duel or engages in any combat with another, with deadly weapons, by previous agreement, or upon a previous quarrel, although no death or wound ensues, is punishable by imprisonment for a term not exceeding ten years. A person convicted under this section is thereafter incapable of holding, or of being elected or appointed to any office or place of trust or emolument, civil or military, within the state.

Am'd by ch. 662 of 1892.

See § 458, post.

Barker v. People, 20 Johns. 457; 8 Cow. 686.

§ 235. Challenger, abettor, etc.

A person who challenges another to fight a duel, or who sends a written or verbal message, purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or who accepts such a challenge or message, or who knowingly carries or delivers such a challenge or message, or who is present at the time appointed for such a duel or combat, or when such a duel or combat is fought, either as second, aid, or surgeon, or who advises or abets, or gives any countenance or assistance to such a duel or combat upon previous agreement, is punishable by imprisonment for not more than seven years.

Wood's case, 3 C. H. Rec. 189.

§ 236. Challenge defined.

Any word, spoken or written, or any sign, uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand, to fight a duel, or to meet for the purpose of fighting a duel, is deemed a challenge.

See § 459, post.

§ 237. Attempts to induce a challenge.

A person guilty of sending or using to another any word or sign whatever, with intent to provoke or induce such person to give or receive a challenge to fight a duel, is guilty of a misdemeanor.

§ 238. Posting for not fighting.

A person who posts or advertises another for not fighting a duel, or for not sending or accepting a challenge to fight a duel,

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or who, in writing or in print, uses reproachful or contemptuous language to or concerning any one, for not sending or accepting a challenge to fight a duel, or for not fighting a duel, is guilty of a misdemeanor.

People v. Beckwith, 45 Hun, 428; 7 N. Y. Cr. Rep. 148.

§ 239. Duel outside of state.

A person who leaves this state with intent to elude any provision of this chapter, or to commit any act without this state, which is prohibited by this chapter, or who being a resident of this state, does any act without this state, which would be punishable by the provisions of this chapter, if committed within this state, is guilty of the same offense, and subject to the same punishment, as if the act had been committed, or was to have been consummated within this state.

See §§ 188, 461, Penal Code; § 133, Code Crim. Pro.

§ 240. Where such persons may be indicted and tried.

A person offending against any provision of the last section may be indicted and tried in any county within this state; but the person so offending may plead a former conviction or acquittal in another state or country for the same offense; and if such plea is admitted or established, it shall be a bar to further proceedings against him, for such offense.

See § 185, ante.

§ 241. Witnesses.

A person offending against any provision of this chapter is a competent witness against any other person offending in the same transaction, and must not be excused from testifying or answering any question, upon an investigation or trial for an offense under this chapter, upon the ground that his testimony might tend to convict him of a crime. But evidence given by a person so testifying, cannot be received against him, in any criminal action or proceeding.

See § 712, post.

Wood's case, 3 C. H. Rec. 189.

CHAPTER VIII.

Libel.

- Sec. 242. Libel defined.**
- 243. Libel a misdemeanor.
 - 244. Malice presumed, defense to prosecution.
 - 245. Publication defined.
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§ 242. Libel defined.

A malicious publication, by writing, printing, picture, effigy, sign or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule or obloquy, or which causes, or tends to cause any person to be shunned or avoided, or which has a tendency to injure any person, corporation or association of persons, in his or their business or occupation, is a libel.

See § 289, Code Crim. Pro.

There must be malice. *White v. Delavan*, 17 Wend. 49; *Coleman's case*, 2 C. H. Rec. 49.

Proof of the falsity of the article is evidence of malice. *Gray v. Sampers*, 85 App. Div. 270.

What is libelous. *White v. Delavan*, 17 Wend. 49; *Weed v. Foster*, 11 Barb. 203; *Thomas v. Croswell*, 7 Johns. 264; *Stillwell v. Barter*, 19 Wend. 487; *Turrell v. Dolloway*, 17 Wend. 426; *Sanderson v. Caldwell*, 45 N. Y. 401; *Perkins v. Mitchell*, 81 Barb. 465; *Moore v. Francis*, 121 N. Y. 205; 30 N. Y. St. Rep. 467; *Morey v. Morning J. Assn.*, 123 N. Y. 207; 33 N. Y. St. Rep. 49; *Dwyer v. Fireman's J. Co.*, 11 Daly, 248; *Fidler v. Delavan*, 20 Wend. 49; *Steele v. Southwick*, 9 Johns. 214; *Fry v. Bennett*, 28 N. Y. 324; *Littlejohn v. Greeley*, 13 Abb. Pr. 41; *Sunderlin v. Bradstreet*, 46 N. Y. 188; *Moore v. Bennett*, 48 N. Y. 475; *Carroll v. White*, 33 Barb. 615; *Nash v. Benedict*, 25 Wend. 645; *People v. Stark*, 59 Hun, 59; 35 N. Y. St. Rep. 155; 12 N. Y. Supp. 690; *Shea v. Sun Pub. Assn.*, 14 Misc. 416; 70 N. Y. St. Rep. 438; 35 N. Y. Supp. 703; *Sorensen v. Balaban*, 11 App. Div. 167; *McFadden v. Morning J. Assn.*, 28 App. Div. 515.

Evidence in mitigation of damages. *Gray v. Brooklyn Union Pub. Co.*, 35 App. Div. 286.

See *Shelby v. Sun Pub. Assn.*, 109 N. Y. 611, aff'g 38 Hun, 474; *People v. Parr*, 42 Hun, 818; *People v. Stark*, 59 Hun, 54; 35 N. Y. St. Rep. 152; *Carpenter v. Hammond*, 1 N. Y. St. Rep. 551; *Bergman v. Jones*, 94 Hun, 52; *People v. Clegg*, 32 N. Y. St. Rep. 701; *People v. Isaacs*, 1 N. Y. St. Rep. 148; *Clark v. Anderson*, 38 N. Y. St. Rep. 866; 11 N. Y. Supp. 780.

§ 243. Libel a misdemeanor.

A person who publishes a libel, is guilty of a misdemeanor.

People v. Stark, 59 Hun, 58; 35 N. Y. St. Rep. 152; 12 N. Y. Supp. 692.

§ 244. Malice presumed; defense to prosecution.

A publication having the tendency or effect, mentioned in section 242, is to be deemed malicious, if no justification or excuse therefor is shown. The publication is justified when the matter charged as libelous is true, and was published with good motives and for justifiable ends. The publication is excused when it is honestly made, in the belief of its truth and upon reasonable grounds for this belief, and consists of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explains to the public.

See §§ 535, 536, Code Civ. Pro.

Freedom of speech of press, art. 1, § 8, N. Y. Const.

Hamilton v. Eno, 81 N. Y. 122; *Hunt v. Bennett*, 19 N. Y. 176; *Powers v. Skinner*, 1 Wend. 451; *Dole v. Lyon*, 10 Johns. 447; *Baldwin's case*, 3 C. H. Rec. 61; *Fry v. Bennett*, 28 N. Y. 324; *Byam v. Collins*, 111 N. Y. 150; 19 N. Y. St. Rep. 581; *Daly v. Byrne*, 1 Abb. N. C. 150; *Cooper v. Barber*, 24 Wend. 106; *Bartholomew v. People*, 2 Hill, 248; *Rice v. Withers*, 9 Wend. 138; *Washburne v. Cook*, 3 Den. 110; *Brooks v. Harrison*, 91 N. Y. 89; *Stilwell v. Barter*, 19 Wend. 487; *Root v. King*, 4 Wend. 114; 7 Cow. 613; *Snyder v. Andrews*, 6 Barb. 43; *Hotchkiss v. Oliphant*, 2 Hill, 510; *Fidler v. Delavan*, 20 Wend. 57; *Thorne v. Blanchard*, 5 Johns. 508; *Bisbey v. Shaw*, 12 N. Y. 67; *Bush v. Prosser*, 11 N. Y. 347; *Ropke v. Brooklyn Daily Eagle*, 9 N. Y. St. Rep. 712; *Holmes v. Jones*, 121 N. Y. 461; 31 N. Y. St. Rep. 379; *Lovell Co. v. Houghton*, 116 N. Y. 520; 27 N. Y. St. Rep. 559; *Moore v. Man. Nat. Bk.*, 123 N. Y. 420; 34 N. Y. St. Rep. 335.

Defense that defendant believed publication to be true. *People v. Sherlock*, 166 N. Y. 180, aff'd 56 App. Div. 422.

§ 245. Publication defined.

To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself.

Lewis v. Few, 5 Johns. 1; *Prescott v. Tousey*, 50 Supr. 12; *Van Cleef v. Lawrence*, 2 C. H. Rec. 41; *Trumbull v. Gibbons*, 3 C. H. Rec. 97; *Southwick v. Stevens*, 10 Johns. 443; *Snyder v. Andrews*, 6 Barb. 43; *People v. Parr*, 4 N. Y. Cr. Rep. 546; *Marx v. P. P. Co.*, 34 N. Y. St. St. Rep. 316; *Woods v. Wiman*, 122 N. Y. 445, rev'd 47 Hun, 362; 14 N. Y. St. Rep. 526.

§ 246. Liability of editors and others.

Every editor, or proprietor of a book, newspaper or serial, and every manager of a partnership or incorporated association, by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another

who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

Shelby v. Sun Pub. Assn., 109 N. Y. 611, aff'g 38 Hun, 474; *Andres v. Wells*, 7 Johns. 280; *Ropke v. Brooklyn Daily Eagle*, 9 N. Y. St. Rep. 709; *Fry v. Bennett*, 28 N. Y. 324; *Hunt v. Bennett*, 19 N. Y. 175; *Purdy v. Rochester P. Co.*, 96 N. Y. 872; *Sunderlin v. Bradstreet*, 46 N. Y. 188; *Thomas v. Croswell*, 7 Johns. 284.

§ 247. Publishing a true report of public official proceedings.

A prosecution for libel cannot be maintained against a reporter, editor, publisher, or proprietor of a newspaper, for the publication therein, of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report.

See § 143, ante.

Thomas v. Croswell, 7 Johns. 284; *Steele v. Southwick*, 9 Johns. 214; *Ackerman v. Jones*, 5 J. & S. 42; *McCabe v. Cauldwell*, 18 Abb. Pr. 377; *Sanford v. Bennett*, 24 N. Y. 20; *Kelly v. Taintor*, 48 How. 270; *Thorn v. Blanchard*, 5 Johns. 508.

§ 248. Qualification of last section.

The last section does not apply to a libel contained in the heading of the report, or in any other matter added by any other person concerned in the publication; or in the report of any thing said or done at the time and place of the public and official proceeding, which was not a part thereof.

Stanley v. Webb, 4 Sandf. 221; *Sanford v. Bennett*, 24 N. Y. 25.

§ 249. Indictment for libel in newspaper against resident.

An indictment for a libel, contained in a newspaper published within this state, against a resident thereof, may be found either in the county where the paper was published, or in the county where the person libeled resided when the offense was committed. In the latter case the defendant is entitled to an order of the Supreme Court, directing the indictment against him to be tried in the county in which the paper was printed and published, upon compliance with the following conditions:

1. He must apply for the order within thirty days after being committed upon, or giving bail to answer, the indictment;

2. He must execute a bond to the complainant, with two sufficient sureties, approved by the judge hearing his application, in a penal sum fixed by the judge, not less than two hundred and fifty nor more than one thousand dollars, conditioned for the payment, in case the defendant is convicted, of all the complainant's reasonable expenses in going to and from his place of residence and the place of trial, and in attendance upon the trial;

3. He must, within ten days after the granting of the order, file the order and deposit the bond with the clerk of the county in which the indictment is pending.

See § 188, Code Crim. Pr.

§ 250. Libel against non-resident.

An indictment for a libel published against a person not a resident of this state, must be found and tried in the county, where the paper containing the libel purports upon its face to be published; or, if no county is indicated upon the face of the paper, in any county where the paper was circulated.

See § 188, Code Crim. Pro.

§ 251. Punishment restricted.

A person cannot be indicted or tried for the publication of the same libel, against the same person, in more than one county.

See § 188, Code Crim. Pro.

§ 252. Power of court, place of trial.

Nothing contained in this chapter shall be construed to abridge, or in any manner affect, the power of a competent court, to change the place of trial of an indictment for libel, in the same manner as may lawfully be done, in respect to any other indictment.

§ 253. Privileged communications.

A communication made to a person entitled to, or interested in, the communication, by one who was also interested in or entitled to make it, or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is presumed not to be malicious, and is called a privileged communication.

To accuse a candidate for a public office of an offense, is not privileged.

Hamilton v. Emo, 81 N. Y. 124; *Root v. King*, 7 Cow. 613; 4 Wend. 113.

Nor against a person holding an office. *Edsall v. Brooks*, 17 Abb. Pr. 221.

Proof where communication is privileged. *Streety v. Wood*, 15 Barb. 105.

Legislative and judicial proceedings are privileged. *Thorn v. Blanchard*, 5 Johns. 508; *Kelly v. Taintor*, 48 How. Pr. 270; *Van Derzee v. McGregor*, 12 Wend. 545; *Cook v. Hill*, 3 Sandf. 341.

Charge of violation of duty to proper authorities is privileged. *Van Wyck v. Aspinwall*, 17 N. Y. 190; 4 Duer, 268; *Newfield v. Copperman*, 15 Abb. (N. S.) 360; 47 How. Pr. 87.

Criticism of management of opera. *Fry v. Bennett*, 28 N. Y. 324.

Address to electors of state. *Hunt v. Bennett*, 19 N. Y. 173; 4 E. D. Smith, 647; *Lewis v. Few*, 5 Johns. 1; *Root v. King*, 7 Cow. 613; 4 Wend. 114.

Criticism of literary work. *Cooper v. Stone*, 24 Wend. 434; *Reed v. Sweetzer*, 6 Abb. (N. S.) 9; *Fry v. Bennett*, 5 Sandf. 54.

Mercantile agency. *Sunderlin v. Bradstreet*, 46 N. Y. 188; *Lewis v. Chapman*, 16 N. Y. 369; *Taylor v. Church*, 8 N. Y. 452.

Attorney's advice to client. *Washburn v. Cook*, 3 Den. 110; *Starr v. Selden*, 4 N. Y. 91; *Gilbert v. People*, 1 Den. 41; *Marsh v. Ellsworth*, 50 N. Y. 809; 36 How. Pr. 532.

In regard to servant. *Halstead v. Nelson*, 24 Hun, 395.

Physician's certificate. *Perkins v. Mitchell*, 31 Barb. 461.

See also *McCabe v. Cauldwell*, 18 Abb. 377; *Wood v. Wyman*, 122 N. Y. 445; 34 N. Y. St. Rep. 46, rev'd 47 Hun, 364; *Byam v. Collins*, 111 N. Y. 150; 19 N. Y. St. Rep. 581; *People v. Stokes*, 30 Abb. N. C. 211; *Lovell v. Houghton*, 116 N. Y. 520; 27 N. Y. St. Rep. 559; *Klinck v. Colby*, 43 N. Y. 427.

§ 254. Threatening to publish libel.

A person who threatens another with the publication of a libel, concerning the latter or concerning any parent, husband, wife, child or other member of the family of the latter, and a person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort, money or other valuable consideration from any person, is guilty of a misdemeanor.

See §§ 553, 558, post.

§ 254a. Furnishing libelous information.

Any person who willfully states, delivers or transmits by any means whatever to any manager, editor, publisher, reporter or other employe of a publisher of any newspaper, magazine, publication, periodical or serial any statement concerning any person or corporation, which, if published therein, would be a libel, is guilty of a misdemeanor.

Am'd by ch. 626 of 1894.

Schoepflin v. Coffey, 162 N. Y. 12, rev'g 25 App. Div. 442.

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TITLE X.

Of Crimes Against the Person and Against Public Decency and Good Morals.

- Chap. I. Crimes against religious liberty and conscience.
II. Rape, abduction, carnal abuse of children, and seduction.
III. Abandonment and neglect of children.
IV. Abortions and concealing death of infant.
V. Bigamy, incest and the crimes against nature.
VI. Violating sepulture and the remains of the dead.
VII. Indecent exposures, obscene exhibitions, books and prints, and disorderly houses.
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IX. Gaming.
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CHAPTER I.

Of Crimes Against Religious Liberty and Conscience.

- Sec. 255. Profane swearing defined.
256. Punishment of profane swearing.
257. Summary conviction for profane swearing.
258. Penalties, how collected.
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260. Sabbath breaking.
261. Day defined.
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264. Persons observing another day as a Sabbath.
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269. Punishment of Sabbath breaking.
270. Forfeiture of commodities exposed for sale.
271. Remedy for maliciously serving process.
272. Compelling adoption of a form of belief.
273. Preventing performance of religious act.
274. Disturbing religious meetings.
275. Definition of the offense.
276. Processions and parades.
277. Theatrical and other performances.

§ 255. Profane swearing defined.

Repealed by ch. 384 of 1882.

§ 256. Punishment of profane swearing.

Repealed by ch. 384 of 1882.

§ 257. Summary conviction for profane swearing.

Repealed by ch. 384 of 1882.

§ 258. Penalties, how collected

Repealed by ch. 384 of 1882.

§ 259. The Sabbath.

The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

Am'd by ch. 358 of 1883.

Matter of Agudath Hakehiloth, 18 Misc. 718; People v. Moses, 140 N. Y. 215, aff'g 65 Hun, 132; 47 N. Y. St. Rep. 181; Anonymous, 12 Abb. N. C. 455; People v. Dennan, 3 N. Y. Cr. Rep. 128; 35 Hun, 327; Dinsmore v. N. Y. Police, 12 Abb. N. C. 436; In re Erbe, 13 Misc. 404; People v. Hoym, 20 How. 76; Lindenmuller v. People, 33 Barb. 548; 21 How. Pr. 156; Vidal v. Girard's Exrs., 2 How. N. S. 127; Neuendorff v. Duryea, 69 N. Y. 563; Smith v. Wilcox, 24 N. Y. 353; People v. Ball, 42 Barb. 324; People v. Ruggles, 8 Johns. 210; People v. Poole, 44 Misc. 118; Dunham v. Binghamton, etc., Baseball Assn., 44 Misc. 112.

§ 260. Sabbath breaking.

A violation of the foregoing prohibition is Sabbath breaking. Steinert v. Sobey, 14 App. Div. 508; Anonymous, 12 Abb. N. C. 457; Dunham v. Binghamton, etc., Baseball Assn., 44 Misc. 112.

§ 261. "Day" defined.

Repealed by ch. 677 of 1892.

§ 262. Acts forbidden.

Repealed by ch. 358 of 1883.

§ 263. Sunday labor.

All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

Am'd by ch. 308 of 1883, and ch. 358 of 1883.

See §§ 263, 265, 268, post.

Merritt v. Earle, 29 N. Y. 122; Eberle v. Mehrbach, 55 N. Y. 682; Billordeaux v. Bencke Lith. Co., 9 N. Y. Supp. 507; 30 N. Y. St. Rep. 656; People v. Moses, 140 N. Y. 216; Tyrrell v. Mayor, 159 N. Y. 244, rev'g 34 App. Div. 336; People v. Haynor, 149 N. Y. 202; People v. Lyons, 5 Hun, 643; Batsford v. Every, 44 Barb. 618; Dinsmore v. Police, 12 Abb. N. C. 437; Solarz v. Man. Ry. Co., 31 Abb. N. C. 428; 8 Misc. 657.

§ 264. Persons observing another day as a Sabbath.

It is a sufficient defense to a prosecution for work or labor on the first day of the week, that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Am'd by ch. 519 of 1885.

Matter of Agudath Hakehiloth, 18 Misc. 718; Maxon v. Annas, 1 Den. 204; Anonymous, 12 Abb. N. C. 457.

§ 265. Public sports.

All shooting, hunting, fishing, playing, horse racing, gaming or other public sports, exercises or shows, upon the first day of the

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week, and all noise disturbing the peace of the day, are prohibited.

Am'd by ch. 358 of 1883.

People v. Dennin, 35 Hun, 328; 3 N. Y. Cr. Rep. 128; Matter of Erbe, 18 Misc. 405; Matter of Rupp, 33 App. Div. 471; People v. Moses, 140 N. Y. 214; 55 N. Y. St. Rep. 403.

Sunday base ball. People ex rel. Bedell v. De Mott, 38 Misc. 171; People v. Poole, 44 Misc. 118; Dunham v. Binghamton, etc., Baseball Assn., 44 Misc. 112.

§ 266. Trades, manufactures and mechanical employments.

All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

Am'd by ch. 358 of 1883.

Quinlan v. Conlin, 13 Misc. 568; Solarz v. Man. Ry. Co., 8 Misc. 657; 31 Abb. N. C. 428; Phil., etc., R. Co. v. Lehman, 56 Md. 209; Manhattan Iron Works Co. v. French, 12 Abb. N. C. 448; Anonymous, 12 Abb. N. C. 458; People v. Lyons, 5 Hun, 643; Sanders v. Staten I. R. Co., 53 N. Y. 450; 14 Abb. N. S. 346, rev'd 13 Abb. N. S. 355; People v. Moses, 140 N. Y. 214; 55 N. Y. St. Rep. 403.

§ 267. Public traffic.

All manner of public selling or offering for sale of any property on Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco, milk, ice and soda-water in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, flowers, confectionery, newspapers, drugs, medicines and surgical appliances may be sold in a quiet and orderly manner at any time of the day. The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day.

Am'd by ch. 358 of 1883, 648 of 1896 and ch. 392 of 1901. In effect Sept. 1, 1901.

Anonymous, 12 Abb. N. C. 458; Boynton v. Page, 13 Wend. 425; O'Shea v. Kohn, 33 Hun, 115; Quinlan v. Conlin, 13 Misc. 568; People v. Haynor, 149 N. Y. 208; Batsford v. Every, 44 Barb. 618.
Amendment of 1901, Constitutional. People ex rel. Woodin v. Hagen, 36 Misc. 349.

§ 268. Serving process.

All service of legal process of any kind whatever, upon the first day of the week is prohibited, except in cases of breach of the peace or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute. Service of any process upon said day except as herein permitted is absolutely void for any and every purpose whatsoever.

Am'd by ch. 622 of 1892.

See § 201G, Code Civ. Pro.

People v. Moses, 140 N. Y. 216; 55 N. Y. St. Rep. 403; Van Vechten v. Faddock, 12 John. 178; Hastings v. Farmer, 4 N. Y. 296; Butler v. Kelsey, 17 John. 172.

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§ 269. Punishment of Sabbath breaking.

Sabbath breaking is a misdemeanor, punishable by a fine not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars, and by imprisonment in a county jail not less than five nor more than twenty days.

Am'd by ch. 535 of 1887.

Matter of Erbe, 13 Misc. 405; Quinlan v. Conlin, 13 Misc. 568; Anonymous, 12 Abb. N. C. 457.

§ 270. Forfeiture of commodities exposed for sale.

In addition to the penalty imposed by the last section, all property and commodities exposed for sale on the first day of the week in violation of the provisions of this chapter shall be forfeited. Upon conviction of the offender by a justice of the peace of a county, or by any police justice or magistrate, or by a mayor, recorder or alderman of a city, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city.

Am'd by ch. 358 of 1883.

Matter of Erbe, 13 Misc. 405, 406; Anonymous, 12 Abb. N. C. 457.

§ 271. Remedy for maliciously serving process.

Whoever maliciously procures any process in a civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

Martin v. Goldstein, 20 App. Div. 294; Maxson v. Annas, 1 Den. 204.

§ 272. Compelling adoption of a form of belief.

An attempt by means of threats or violence, to compel any person to adopt, practice or profess a particular form of religious belief, is a misdemeanor.

Religious Liberty, art. 1, § 3, N. Y. Const.
U. S. Const., First Amendment.

§ 273. Preventing performance of religious act.

A person who willfully prevents by threats or violence another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

§ 274. Disturbing religious meetings.

A person who willfully disturbs, interrupts or disquiets any as-

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semblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

See §§ 448, 650, post.

First Bapt. Ch. v. Utica & S. R. Co., 5 Barb. 79; 6 Barb. 819; *Beckett v. Lawrence*, 7 Abb. (N. S.) 408; *Wall v. Lee*, 34 N. Y. 141; *Steinert v. Sobey*, 14 App. Div. 506; *Farren v. Warren*, 8 Wend. 253; *People v. Crowley*, 23 Hun, 412; *Foster v. Smith*, 10 Wend. 377.

§ 275. Definition of the offense.

The following acts, or any of them, except as permitted by chapter four hundred and seventy-nine of the laws of eighteen hundred and eighty-seven or the acts amendatory thereof, constitute a disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting.

2. Engaging in, or promoting, within two miles of the place where a religious meeting is held, any racing of animals or gambling of any description; or elsewhere than in a city or village keeping open any huckster shop, inn, store or grocery, in any other place than that in which such business shall have usually been carried on; or elsewhere than in a city exhibiting within the distance aforesaid any shows or plays, unless the same shall have been duly licensed by the proper authorities.

3. Obstructing in any manner without authority of law, within the like distance, free passage along a highway to the place of such meeting.

Am'd by ch. 292 of 1893.

People v. Crowley, 23 Hun, 412. See also cases under § 274.

§ 276. Processions and parades.

All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fireworks, discharge of cannon or firearms, or other disbursing* noise. At a military funeral, and at the burial of a national guardsman, or of a deceased member of an association of veteran soldiers, or of a disbanded militia regiment, or of a secret fraternal society, music may be played while escorting the body, but not within one block of a place of worship where service is then celebrated. A person willfully violating any provision of this section is punishable by fine not exceeding twenty dollars or imprisonment not exceeding ten days, or by both.

Am'd by chs. 302 and 358 of 1883, and ch. 778 of 1895.

§ 277. Theatrical and other performances.

The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, negro or other dancing, wrestling, boxing with

* So in original.

or without gloves, sparring contest, trial of strength, or any part or parts therein, or any circus, equestrian, or dramatic performance or exercise, or any performance or exercise of jugglers, acrobats, club performances or ropedancers, on the first day of the week, is forbidden; and every person aiding in such exhibition, performance or exercise, by advertisement, posting or otherwise, and every owner or lessee of any garden, building or other room, place or structure, who leases or lets the same for the purpose of any such exhibition or performance or exercise, or who assents to the use of the same for any such purpose, if it be so used, is guilty of a misdemeanor.

In addition to the punishment therefor provided by statute, every person violating this section is subject to a penalty of five hundred dollars; which penalty "The Society for the Reformation of Juvenile Delinquents" in the city of New York, for the use of that society, and the overseers of the poor in any other city or town, for the use of the poor, are authorized, in the name of the people of this state, to recover. Besides this penalty, every such exhibition, performance or exercise, of itself, annuls any license which may have been previously obtained by the manager, superintendent, agent, owner or lessee, using or letting such building, garden, room, place or other structure, or consenting to such exhibition, performance or exercise.

Am'd by ch. 358 of 1883.

Neuendorf v. Duryea, 69 N. Y. 557; 6 Daly, 278. See People v. Hoym, 20 How. 76.

Dancing on Sunday, when not within this section. Matter of Allen, 34 Misc. 698.

CHAPTER II.

Rape, Abduction, Carnal Abuse of Children, and Seduction.

- Sec. 278. Rape defined.
 279. When physical ability must be proved.
 280. Penetration sufficient.
 280a. Adultery defined.
 280b. How punished.
 281. Compelling woman to marry.
 282. Abduction in certain cases defined.
 282a. Compulsory prostitution of women.
 282b. Placing wife in house of prostitution.
 283. No conviction on certain testimony.
 284. Seduction under promise of marriage.
 285. Subsequent marriage.
 286. No conviction on certain testimony.

§ 278. Rape defined.

A person who perpetrates an act of sexual intercourse with a female not his wife, against her will or without her consent, or,

1. When through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent, or, by reason of mental or physical weakness, or immaturity, or any bodily ailment, she does not offer resistance; or,

2. When her resistance is forcibly overcome; or,

3. When her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her; or,

4. When her resistance is prevented by stupor, or weakness of mind produced by an intoxicating, or narcotic, or anaesthetic agent; or, when she is known by the defendant to be in such state of stupor or weakness of mind from any cause; or,

5. When she is, at the time, unconscious of the nature of the act, and this is known to the defendant, or when she is in the custody of the law, or of any officer thereof, or in any place of lawful detention, temporary or permanent, is guilty of rape in the first degree and punishable by imprisonment for not more than twenty years. A person who perpetrates an act of sexual intercourse with a female, not his wife, under the age of eighteen years, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable with imprisonment for not more than ten years.

Am'd by ch. 325 of 1892, and ch. 460 of 1895.

See § 218, ante.

Administering drugs, etc., assault second degree, § 218, subd. 2, Penal Code.
 Subd. 1. *Hays v. People*, 1 Hill, 351; *Singer v. People*, 75 N. Y. 608, aff'g 18 Hun, 418.

Subd. 3. *People ex rel. Engel v. Special Sessions*, 18 Hun, 330; *People v. Morrison*, 1 Park, 625; *People v. Clemons*, 37 Hun, 580; *People v. Dohring*, 59 N. Y. 374.

Subd. 5. *People v. Quinn*, 50 Barb. 128; *People v. Nelson*, 153 N. Y. 92.
 See *Dean v. Raplee*, 145 N. Y. 326.

Subd. 6. *People v. Quinn*, *supra*.

Resistance. *People v. Dohring*, 59 N. Y. 374; 17 Am. Rep. 349; *People v. Morrison*, 1 Park, 625; *People v. Quinn*, 50 Barb. 128; *People v. Bowles*, 3 N. Y. Cr. Rep. 447; *People v. Connor*, 126 N. Y. 281.

Force. *People v. Barber*, 50 Barb. 144.

Consent. *People v. Flaherty*, 79 Hun, 48; 61 N. Y. St. Rep. 197; 29 N. Y. Supp. 641; *People v. Clemons*, 3 N. Y. Cr. Rep. 565; *People v. Maron*, 57 Hun, 369.

Evidence sufficient to sustain conviction. *People v. Flaherty*, 27 App. Div. 535; 50 N. Y. Supp. 574; *People v. McKeon*, 64 Hun, 69; 45 N. Y. St. Rep. 69; 19 N. Y. Supp. 486.

Indictment. *Gongleman v. People*, 3 Park. 15; *People v. Draper*, 28 Hun, 1; 1 N. Y. Cr. Rep. 138.

Evidence. *People v. Grauer*, 12 App. Div. 464; 42 N. Y. Supp. 721; *People v. Terwilliger*, 74 Hun, 810; 56 N. Y. St. Rep. 255; 26 N. Y. Supp. 674, aff'd 142 N. Y. 629; *People v. Kirwan*, 51 N. Y. St. Rep. 299; 22 N. Y. Supp. 180; *People v. Crowley*, 102 N. Y. 234; 4 N. Y. Cr. Rep. 169; below 4 N. Y. Cr. Rep. 36; *People v. O'Sullivan*, 104 N. Y. 481; 58 Am. Rep. 530; *People v. Sharp*, 107 N. Y. 474; *People v. Abbott*, 19 Wend. 200; *People v. Harrison*, 50 Hun, 46; *Woods v. People*, 55 N. Y. 515; 14 Am. Rep. 309; *Baccio v. People*, 41 N. Y. 285; *People v. Jackson*, 3 Park. 391; *People v. Clemons*, 3 N. Y. Cr. Rep. 570; *People v. Davey*, 179 N. Y. 345, rev'd 94 App. Div. 345; *People v. Green*, 103 App. Div. 79.

§ 279. When physical ability must be proved.

No conviction for rape can be had against one who was under the age of fourteen years, at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, beyond a reasonable doubt.

People v. Randolph, 2 Park. 176; *People v. Clark*, 8 N. Y. Cr. Rep. 210; 14 N. Y. Supp. 655.

§ 280. Penetration sufficient.

Any sexual penetration, however slight, is sufficient to complete the crime. *People v. Crowley*, 102 N. Y. 237; 4 N. Y. Cr. Rep. 168; *People v. Estell*, 106 App. Div. 516.

§ 280a. Adultery defined.

Adultery is the sexual intercourse of two persons, either of whom is married to a third person. A person who commits adultery is guilty of a misdemeanor. A conviction under this section cannot be had on the uncorroborated testimony of the person with whom the offense is charged to have been committed.

Added by ch. 583 of 1907.

§ 280b. How punished.

A person convicted of a violation of this act is punishable by imprisonment in a penitentiary or county jail, for not more than six months or by a fine of not more than two hundred and fifty dollars, or by both.

Added by ch. 583 of 1907.

§ 281. Compelling woman to marry.

A person who by force, menace or duress, compels a woman against her will to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment for a term not exceeding ten years, or by a fine of not more than one thousand dollars, or by both.

Am'd by ch. 662 of 1892.

See § 282, subd. 3, post.

Walter v. People, 50 Barb. 144; *Schnicker v. People*, 88 N. Y. 192; *Beyer v. People*, 88 N. Y. 369.

§ 282. Abduction in certain cases defined.

A person who,

1. Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed or harbored or used, a female under the age of eighteen years, for the purpose of prostitution; or, not being her husband, for the purpose of sexual intercourse; or without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or,

2. Inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse; or,

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3. Takes or detains a female unlawfully against her will, with the intent to compel her, by force, menace, or duress, to marry him, or to marry any other person, or to be defiled; or,

4. Being parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse,

Is guilty of abduction, and punishable by imprisonment for not more than ten years, or by a fine of not more than one thousand dollars, or by both.

Am'd by chs. 46 of 1884, 31 of 1886, ch. 460 of 1895, and ch. 83 of 1902.

What is abduction. *Carpenter v. People*, 8 Barb. 606; *People v. Sheppard*,

44 Hun, 565; 5 N. Y. Cr. Rep. 136; 9 N. Y. St. Rep. 35; *People v. Stott*, 4 N. Y. Cr. Rep. 306; *People v. Plath*, 100 N. Y. 597; 4 N. Y. Cr. Rep. 54, rev'g 36 Hun, 454.

Prostitution. *People v. Parshall*, 6 Park. 134.

Subd. 1. *People v. Seeley*, 101 N. Y. 642; 3 N. Y. Cr. Rep. 225; 37 Hun, 190; *Moot v. Moot*, 37 Hun, 288; *People v. Powell*, 4 N. Y. Cr. Rep. 590; *People v. Scott*, 5 N. Y. Cr. Rep. 61, aff'd 4 N. Y. Cr. Rep. 306; *People v. Gibson*, 6 N. Y. Cr. Rep. 390; 4 N. Y. Supp. 170; 21 N. Y. St. Rep. 59; *People v. Crami*, 101 App. Div. 366; *People v. Smith*, 114 App. Div. 513.

Subd. 2. *People v. Crotty*, 30 N. Y. St. Rep. 45; 9 N. Y. Supp. 938; *Safford v. People*, 1 Park. 478; *People v. Kane*, 14 Abb. Pr. 15; *Schnicker v. People*, 88 N. Y. 192; *Crozier v. People*, 1 Park. 453; *Kenyon v. People*, 26 N. Y. 203; 5 Park. 254; *People v. Brandt*, 110 N. Y. 657; 14 N. Y. St. Rep. 419; *Kauffman v. People*, 11 Hun, 82.

See also *People v. Platt*, 3 N. Y. Cr. Rep. 135; 2 How. Pr. (N. S.) 105; *People v. Brown*, 71 Hun, 607; *People v. Hatter*, 22 N. Y. Supp. 690; *People v. O'Sullivan*, 104 N. Y. 490; 5 N. Y. St. Rep. 702; *People v. Betsinger*, 49 N. Y. St. Rep. 597; 21 N. Y. Supp. 136.

Age, evidence of. *People v. Ragone*, 54 App. Div. 498.

Corroboration. *People v. Butler*, 55 App. Div. 361; *People v. Swasey*, 77 App. Div. 185.

Evidence. *People v. Miller*, 70 App. Div. 592; *People v. Green*, 108 App. Div. 79.

Improper opening of counsel. *People v. Wolf*, 183 N. Y. 464.

§ 282a. Compulsory prostitution of women.

Subdivision 1. Any person who shall place any female in the charge or custody of any other person for immoral purposes or in a house of prostitution with intent that she shall live a life of prostitution; or any person who shall compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution or shall compel any such female to reside in a house of prostitution or compel her to live a life of prostitution is punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment for not less than one year nor more than three years or by both such fine and such imprisonment.

Subdivision 2. Any person who shall receive any money or other valuable thing for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons to whom she is not married shall be guilty of a misdemeanor.

Subdivision 3. Any person who shall pay any money or other valuable thing to procure any female for the purpose of placing her for immoral purposes in any house of prostitution or elsewhere against her will, shall be fined not less than one thousand dollars nor more than five thousand dollars, and by imprisonment for a period not less than one year, nor more than three years.

Subdivision 4. Every person who shall knowingly receive any money or other valuable thing for or on account of procuring and placing in the custody of another person for immoral purposes any woman, with or without her consent, is punishable by imprisonment not exceeding five years and a fine not exceeding one thousand dollars.

Subdivision 5. No conviction shall be had under this act upon the testimony of the female unless supported by other evidence.

Added by ch. 413 of 1906.

§ 282b. Placing wife in house of prostitution.

Subdivision 1. Any man who by force, fraud, intimidation or threats, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony and upon conviction thereof shall be imprisoned for not more than ten years.

Subdivision 2. In all prosecutions under this act, the wife shall be a competent witness against the husband, but no conviction under this act shall be had upon the testimony of the wife unsupported by other evidence.

Added by ch. 138 of 1906.

§ 283. No conviction on certain testimony.

No conviction can be had for abduction, compulsory marriage, rape or defilement, upon the testimony of the female abducted, compelled or defiled, unsupported by other evidence.

Am'd by ch. 663 of 1886.

People v. Brandt, 110 N. Y. 647, aff'g 14 N. Y. St. Rep. 419; People v. Stott, 5 N. Y. Cr. Rep. 61; People v. Plath, 100 N. Y. 590; 4 N. Y. Cr. Rep. 53; People v. O'Sullivan, 104 N. Y. 481; People v. Cullen, 23 N. Y. St. Rep. 559; 5 N. Y. Supp. 886; People v. Crowley, 102 N. Y. 234; 1 N. Y. St. Rep. 388; People v. Elliot, 5 N. Y. Cr. Rep. 216; People v. Lyon, 83 Hun, 305; People v. Grauer, 12 App. Div. 468; People v. Flaherty, 27 App. Div. 549; People v. Terwilliger, 74 Hun, 311; People v. Kirwan, 51 N. Y. St. Rep. 300; 22 N. Y. Supp. 160; People v. Powell, 4 N. Y. Cr. Rep. 586; Crandall v. People, 2 Lans. 309; Woodin v. People, 1 Park. 464.

Age, evidence of. People v. Ragone, 54 App. Div. 498.

Corroboration. People v. Butler, 55 App. Div. 361; People v. Panyko et al., 71 App. Div. 324; People v. Swasey, 77 App. Div. 185; People v. Biglizer, 112 App. Div. 225.

§ 284. Seduction under promise of marriage.

A person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or by both.

What is not seduction. Safford v. People, 1 Park. 474; People v. Alger, 1 Park. 333.

What is seduction. Armstrong v. People, 70 N. Y. 51; Kenyon v. People, 26 N. Y. 203; People v. Kane, 14 Abb. Pr. 15; People v. Hustis, 32 Hun, 58; 2 N. Y. Cr. Rep. 448; Boyce v. People, 55 N. Y. 845.

Proof. Kauffman v. People, 11 Hun, 86; Conkey v. People, 5 Park. 431; Kenyon v. People, 26 N. Y. 203; People v. McArdle, 5 Park. 180; Boyce v. People, 55 N. Y. 644; People v. Eckert, 2 N. Y. Cr. Rep. 470; People v. Irving, 95 N. Y. 541; 2 N. Y. Cr. Rep. 171; People v. Kane, 14 Abb. Pr. 15.

Indictment, amendment of. People v. Johnson, 104 N. Y. 213; 5 N. Y. Cr. Rep. 218, aff'g 4 N. Y. Cr. Rep. 591.

Charge of judge. Reynolds v. People, 41 How. Pr. 179.

See People v. Crotty, 30 N. Y. St. Rep. 45; 9 N. Y. Supp. 938; Crandall v. People, 2 Lans. 309; People v. Kearney, 110 N. Y. 188, rev'g 47 Hun, 129; People v. Eckert, 2 N. Y. Cr. Rep. 481; People v. Gumaer, 80 Hun, 78; People v. Van Alstyne, 144 N. Y. 364; People v. Duryea, 81 Hun, 391; People v. Orr, 92 Hun, 200; People v. Nelson, 153 N. Y. 92.

§ 285. Subsequent marriage.

The subsequent intermarriage of the parties, or the lapse of two years after the commission of the offense before the finding of an indictment, is a bar to a prosecution for a violation of the last section.

People v. Nelson, 153 N. Y. 92; People v. Hatter, 22 N. Y. Supp. 690; Cook v. People, 2 T. & C. 407.

§ 286. No conviction on certain testimony.

No conviction can be had for the offense specified in section 284, upon the testimony of the female seduced, unsupported by other evidence.

See § 399, Code Crim. Pro.

People v. Kearney, 110 N. Y. 188; 17 N. Y. St. Rep. 165, rev'g 47 Hun, 130; 13 N. Y. St. Rep. 246; Armstrong v. People, 70 N. Y. 38; Boyce v. People, 55 N. Y. 644; People v. Kenyon, 5 Park. 254; People v. Lomax, 6 Abb. Pr. 189; People v. Hustis, 2 N. Y. Cr. Rep. 448; People v. Gumaer, 80 Hun, 78; People v. Lyons, 83 Hun, 305; People v. Orr, 92 Hun, 200; Crandall v. People, 2 Lans. 309; People v. Alger, 1 Park. 333; Cook v. People, 2 T. & C. 407.

CHAPTER III.

Abandonment and Other Acts of Cruelty to Children.

Sec. 287. Abandonment of child under fourteen years.

- 287a. Abandonment of children.
- 288. Unlawfully omitting to provide for child.
- 289. Endangering life, etc.
- 290. Keepers of concert saloons, etc.
- 290a. Boarding infants without license.
- 291. Children not to beg, etc.
- 292. Certain employment of a child.
- 292a. Penalty for sending messenger boys to certain places.
- 292b. Taking apprentice without consent of guardian.
- 293. Duty of officers of society.

§ 287. Abandonment of child under fourteen years.

A parent, or other person having the care or custody, for nurture or education of a child under the age of fourteen years, who deserts the child in any place, with intent wholly to abandon it, is punishable by imprisonment for not more than seven years.

Am'd by ch. 325 of 1892 and ch. 376 of 1903.

Section construed. People v. Joyce, 112 App. Div. 717.

Bayne v. People, 14 Hun, 181; People ex rel. Douglass v. Naehr, 30 Hun, 461; Kehlback v. Walsh, 11 Hun, 292.

§ 287a. Abandonment of children.

A parent or other person charged with the care or custody for nurture or education of a child under the age of sixteen years, who abandons the child in destitute circumstances and willfully omits to furnish necessary and proper food, clothing or shelter for such child is guilty of felony, punishable by imprisonment for not more than two years, or by a fine not to exceed one thousand dollars, or by both. In case a fine is imposed the same may be applied in the discretion of the court to the support of such child. Proof of the abandonment of such child in destitute circumstances and omission to furnish necessary and proper food, clothing or shelter is *prima facie* evidence that such omission is willful. The provisions of section seven hundred and fifteen of this Code prohibiting the disclosure of confidential communications between husband and wife shall not apply to prosecutions for the offense here defined. A previous conviction or convictions of felony or misdemeanor shall not prevent the court from suspending sentence upon a conviction under this section, or from arbitrarily fixing the limit of imprisonment or fine, in case imprisonment or fine is imposed upon conviction herein.

2. Nothing in this act contained shall be deemed or construed to repeal, amend, impair or in any manner affect the provisions of sections two hundred and eighty-seven, two hundred and eighty-eight or two hundred and eighty-nine of the Penal Code or any other existing provisions of law relating to abandonment or other acts of cruelty to children.

Added by ch. 168 of 1905.

§ 288. Unlawfully omitting to provide for child.

A person who,

1. Willfully omits, without lawful excuse, to perform a duty by law imposed upon him to furnish food, clothing, shelter or medical attendance to a minor, or to make such payment towards its maintenance as may have been required by the order of a court or magistrate when such minor has been committed to an institution; or,

2. Not being a superintendent of the poor, or a superintendent of almshouses, or an institution duly incorporated for the purpose, without having first obtained a license in writing so to do from the board of health of the city or town wherein such females or children are received, boarded or kept, erects, conducts, establishes or maintains any maternity hospital, lying-in

asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or receives, boards or keeps any nursing children, or any children under the age of twelve years not his relatives, apprentices, pupils or wards without legal commitment; or,

3. Being a midwife, nurse or other person having the care of an infant within the age of two weeks neglects or omits to report immediately to the health officer or to a legally qualified practitioner of medicine of the city, town or place where such child is being cared for, the fact that one or both eyes of such infant are inflamed or reddened whenever such shall be the case, or who applies any remedy therefor without the advice, or except by the direction of such officer or physician; or,

4. Neglects, refuses or omits to comply with any provisions of this section, or who violates the provisions of such license, is guilty of a misdemeanor. Every such license must specify the name and residence of the person so undertaking the care of such females or children, and the place and the number of females or children thereby allowed to be received, boarded and kept therein, and shall be revocable at will by the authority granting it. Every person so licensed must keep a register wherein he shall enter the names and ages of all such children and of all children born on said premises, and the names and residences of their parents, as far as known, the time of the reception and discharge of such children and the reasons therefor, and also a correct register of the name and age of every child under the age of five years who is given out, adopted, taken away or indentured from such place to or by any one, together with the name and residence of the person so adopting, taking or indenturing such child; and shall cause a correct copy of such register to be sent to the authority issuing such license within forty-eight hours after such child is so given out, adopted, taken away or indentured. It shall be lawful for the officers of any incorporated society for the prevention of cruelty to children and of such board of health at all reasonable times to enter and inspect the premises wherein such females and children are so boarded, received or kept, and also such license register and the children.

5. No institution shall be incorporated for any of the purposes mentioned in this section except with the written consent and approbation of a justice of the supreme court, upon the certificate in writing of the state board of charities approving of the organization and incorporation of such institution. The said board of charities may apply to the supreme court for the cancellation of any certificate of incorporation previously filed without its approval, and may institute and maintain an action in such court through the attorney-general to procure a judgment dissolving any such corporation not so incorporated and forfeiting its corporate rights, privileges and franchises.

Am'd by chs. 46 of 1884 and 31 of 1886, ch. 145 of 1888 and ch. 325 of 1892; subd. 5 added by ch. 171 of 1894.

People v. McDonald, 49 Hun, 68; 17 N. Y. St. Rep. 494; 1 N. Y. Supp. 704; Furzman v. Van Sise, 56 N. Y. 435; Cromwell v. Benjamin, 41 Barb. 558; Crowley v. People, 83 N. Y. 464, aff'g 21 Hun, 415; People v. N. Y. S., etc., 25 Misc. 54; People v. Pierson, 176 N. Y. 201, rev'g 80 App. Div. 415.

Subd. 2 is constitutional. People ex rel. Wagner v. Hagen, 52 App. Div. 387.

§ 289. Endangering life, etc.

A person who,

1. Willfully causes or permits the life or limb of any child actually or apparently under the age of sixteen years to be endangered, or its health to be injured, or its morals to become depraved; or,

2. Willfully causes or permits such child to be placed in such a situation or to engage in such an occupation that its life or limb is endangered, or its health is likely to be injured, or its morals likely to be impaired; is guilty of a misdemeanor.

3. Any parent or guardian or other person having custody of a child under sixteen years of age, except in the city of New York who omits to exercise due diligence in the control of such child, to prevent such child from violating any of the provisions of this chapter and any such person or any other person re-

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sponsible for or who by any act or omission causes, encourages or contributes to the violation by any such child of said provisions shall be guilty of a misdemeanor and punishable accordingly.

Am'd by ch. 145 of 1888.

Subd. 3 added by ch. 655 of 1905.

Cowley v. People, 83 N. Y. 464; 11 Week. Dig. 516; People v. Pierson, 176 N. Y. 201, rev'd 80 App. Div. 415; People v. Donahue, 114 App. Div. 830.

§ 290. Keepers of concert saloons, etc.

A person who,

1. Admits to or allows to remain in any dance-house, concert saloon, theatre, museum, skating rink, or in any place where wines or spirituous or malt liquors are sold or given away, or in any place of entertainment injurious to health or morals, owned, kept or managed by him in whole or in part, any child actually or apparently under the age of sixteen years, unless accompanied by its parent or guardian; or,

2. Suffers or permits any such child to play any game of skill or chance in any such place, or in any place adjacent thereto, or to be or remain therein, or admits to or allows to remain in and reputed house of prostitution or assignation, or in any place where opium or any preparation thereof is smoked, any child actually or apparently under the age of sixteen years; or,

3. Sells or gives away, or causes or permits or procures to be sold or given away to any child actually or apparently under the age of sixteen years, any beer, ale, wine, or any strong or spirituous liquor; or,

4. Being a pawnbroker or person in the employ of a pawnbroker, makes any loan or advance or permits to be loaned or advanced to any child actually or apparently under the age of sixteen years any money, or in any manner directly or indirectly receives any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever; or,

5. Sells, pays for or furnishes any cigar, cigarette or tobacco in any of its forms to any child actually or apparently under the age of sixteen years;

6. Or who, being the owner, keeper or proprietor of a junk shop, junk cart or other vehicle or boat or other vessel used for the collection of junk, or any collector of junk, receives or purchases any goods, chattels, wares or merchandise from any child under the age of sixteen years,

* 7. No child actually or apparently under sixteen years of age shall smoke or in any way use any cigar, cigarette or tobacco in any form whatsoever in any public street, place or resort. A violation of this subdivision shall be a misdemeanor, and shall be punished by a fine not exceeding ten dollars and not less than two dollars for each offense.

8. It shall be no defense to a prosecution for a violation of subdivisions three, four, five or six of this section, that in the transaction upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

Is guilty of a misdemeanor.

Am'd by chs. 46 of 1884, 31 of 1886 and ch. 170 of 1889. Subd. 6 added by ch. 209 of 1903, and subd. 8 added by ch. 41 of 1906.

People v. Ko-nig, 9 App. Div. 437; People v. N. Y. Cath. Protectory, 101 N. Y. 197; 4 N. Y. Cr. Rep. 80; People v. Zabor, 44 Misc. 633; People v. Jensen, 99 App. Div. 355; People v. Zabor, 103 App. Div. 594, rev'd 183 N. Y. 242.

Subd. 6. Constitutional. People v. McGuire, 113 App. Div. 631. Junk dealer, defined. City of N. Y. v. Vandewater, 113 App. Div. 456. Ticket agcnt. People ex rel. Jacques v. Sheriff, 54 Misc. 8.

§ 290a. Boarding infants without license.

Added by ch. 692 of 1893; repealed by ch. 171 of 1894.

§ 291. Children not to beg, etc.

Any child actually or apparently under the age of sixteen years who is found:

1. Begging or receiving or soliciting alms, in any manner or

* Subd. 7 was added by ch. 417 of 1890 to § 291, but the legislature evidently intended to add it to § 290. If not, the subdivision was repealed by implication or at least superseded by ch. 217 of 1892, which added a subd. 7 to § 291, and by ch. 414 of 1896, which amended the last-mentioned subd. 7.

under any pretense; or gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or

2. Not having any home or other place of abode or proper guardianship; or who has been abandoned or improperly exposed or neglected, by its parents or other person or persons having it in charge, or being in a state of want or suffering; or

3. Destitute of means of support, being an orphan, or living or having lived with or in custody of a parent or guardian who has been sentenced to imprisonment for crime, or who has been convicted of a crime against the person of such child, or has been adjudged an habitual criminal; or

4. Frequenting or being in the company of reputed thieves or prostitutes, or in a reputed house of prostitution or assignation, or living in such a house either with or without its parent or guardian, or being in concert saloons, dance-houses, theatres, museums or other places of entertainment, or places where wines, malt or spirituous liquors are sold, without being in charge of its parent or guardian; or playing any game of chance or skill in any place wherein or adjacent to which any beer, ale, wine or liquor is sold or given away, or being in any such place; or

5. Coming within any of the descriptions of children mentioned in section two hundred and ninety-two, must be arrested and brought before a proper court or magistrate, who may commit the child to any incorporated charitable reformatory, or other institution, and when practicable, to such as is governed by persons of the same religious faith as the parents of the child, or may make any disposition of the child such as now is, or hereafter may be authorized in the cases of vagrants, truants, paupers or disorderly persons, but such commitment shall, so far as practicable, be made to such charitable or reformatory institutions. Whenever any child shall be committed to an institution under this Code, and the warrant of commitment shall so state, and it shall appear therefrom that either parent, or any guardian or custodian of such child was present at the examination before such court or magistrate, or had such notice thereof as was by such court or magistrate deemed and adjudged sufficient, no further or other notice required by any local or special statute, in regard to the committal of children to such institution, shall be necessary, and such commitment shall in all respects be sufficient to authorize such institutions to receive and retain such child in its custody as therein directed. Whenever any commitment of a child shall for any reason be adjudged or found defective, a new commitment of the child may be made or directed by the court or magistrate, as the welfare of the child may require. And no commitment of a child which shall recite therein the facts upon which it is based shall be deemed invalid by reason of any omission of the court or magistrate by whom such commitment is made to file any documents, papers or proceedings relating thereto, or by reason of any limitation as to the age of the child committed, contained in the act or articles of incorporation of the institution to which it may have been committed.

6. Any magistrate having criminal jurisdiction may commit, temporarily, to an institution authorized by law to receive children on final commitment, and to have compensation therefor from the city or county authorities, any child under the age of sixteen years, who is held for trial on a criminal charge; and may, in like manner, so commit any such child held as a witness to appear on the trial of any criminal case; which institution shall thereupon receive the same, and be entitled to the like compensation proportionally therefor as on final commitment, but subject to the order of the court as to the time of detention and discharge of the child. Any such child convicted of any misdemeanor shall be finally committed to some such institution, and not to any prison or jail, or penitentiary, longer

than is necessary for its transfer thereto. No child under restraint or conviction, actually or apparently under the age of sixteen years, shall be placed in any prison or place of confinement in company with adults charged with or convicted of crime, except in the presence of a proper official.

7. All cases involving the commitment or trial of children actually or apparently under the age of sixteen years for any violation of law, in any court shall be heard and determined by such court, at suitable times to be designated therefor by it, separate and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept. All such cases shall, so far as practicable, be heard and determined in a separate court room to be known as the children's court and to be used exclusively for the examination and trial of children, actually or apparently under the age of sixteen years, charged with any offense. And all such cases and cases of offenses by, or against the person of, a child under the age of sixteen years shall have preference over all other cases before all magistrates and in all courts and tribunals in this state, both civil and criminal; and where a child is committed or detained as a witness in any case such case shall be brought to trial or otherwise disposed of without delay, whether the defendant be in custody or enlarged on bail.

8. All children actually or apparently under the age of sixteen who desert their homes without good or sufficient cause, or keep company with dissolute, immoral or vicious persons, shall be deemed disorderly children. Those actually or apparently under the like age who are not susceptible of proper restraint or control by their parents, guardians, or lawful custodians, or who are habitually disobedient to their reasonable and lawful commands, shall be deemed ungovernable children. A disorderly or ungovernable child may be dealt with as provided in the fifth subdivision of this section.

9. Whenever any child is brought before any court or magistrate, to be dealt with under any of the subdivisions of this section, instead of committing such child to confinement in any institution, the court or magistrate may place such child under the custody of a probation or parole officer, and at any time within one year thereafter such court or magistrate, may issue a warrant for such child, and after giving such child an opportunity to be heard, may make the commitment which could have been made in the first instance as aforesaid. The foregoing provision shall not apply to a children's court created by special enactment in cities of the first class but this exception shall not be construed as taking away or limiting any jurisdiction now possessed by such children's courts.

Am'd by chs. 46 of 1884, 31 of 1886, ch. 145 of 1888, ch. 417 of 1890; subd. 7 added by ch. 217 of 1892, and am'd by ch. 414 of 1894 and ch. 381 of 1903; subd. 8 added by ch. 50 of 1903; subd. 9 added by ch. 655 of 1905.

Jurisdiction. Matter of McMahon, 64 How. Pr. 285; 1 N. Y. Cr. Rep. 58; Matter of Moses, 18 Abb. N. C. 189; 1 N. Y. Cr. Rep. 508.

What constitutes act "of begging alms." Matter of Hallar, 12 Hun, 131. What is not within statute. Matter of Mahoney, 51 Hun, 372; 6 N. Y. Cr. Rep. 248; People v. Cath. Prot., 106 N. Y. 608; 5 N. Y. Cr. Rep. 499, aff'g 44 Hun, 426.

Commitment. People v. School of Industry, 28 N. Y. St. Rep. 254; Matter of Mahoney, 51 Hun, 372; 6 N. Y. Cr. Rep. 241; Matter of Forbes, 19 How. Pr. 457; People v. Neilson, 16 Hun, 214; People ex rel. Perkenson v. Order of St. Dom., 2 N. Y. Cr. Rep. 258; 1 How. Pr. (N. S.) 132; 34 Hun, 463; Matter of Roche, 18 Week. Dig. 514; People ex rel. Eck v. Society, 1 How. Pr. (N. S.) 137; People v. Degnen, 6 Abb. Pr. (N. S.) 87; 54 Barb. 105; Matter of Wright, 29 Hun, 357; People ex rel. Tweed v. Liscomb, 60 N. Y. 559; Matter of Baker, 11 How. Pr. 418; Matter of Maschke, 2 N. Y. Cr. Rep. 168; People v. The Keeper, etc., 37 How. Pr. 494; Matter of Coughlin, 62 How. Pr. 34.

Commitment under this section not criminal proceeding. Matter of Knowack, 158 N. Y. 482, aff'g 29 App. Div. 627.

See also People v. N. Y. Cath. Prot., 101 N. Y. 195; 4 N. Y. Cr. Rep. 28; Matter of Riley, 31 Hun, 63; In re Maloney, 2 N. Y. Supp. 248; People v. Baker, 19 N. Y. St. Rep. 488; People v. Polly, 17 Misc. 163; People v. Giles, 152 N. Y. 136, aff'g 12 App. Div. 499; Matter of Cohn, 28 Misc. 658; People v. N. Y. Soc., 19 Misc. 582; People ex rel. Cronin v. Carpenter, 25 Misc. 341; People v. N. Y. Soc., etc., 25 Misc. 54; Matter of Bruffett, 27 Misc. 329; People ex rel. Horton v. Fuller, 41 App. Div. 406; Matter of Hogan, 55 How. 458; People v. Moore, 3 Park. 465; Matter of Larson, 31 Hun, 539; Matter of Nichols, 4 N. Y. St. Rep. 659; Matter of Diss Debar, 3 N. Y. Supp. 667; People ex rel. McCarthy v. French, 25 Hun, 111; Matter of Heery, 51 Hun, 373; 21 N. Y. St. Rep. 82.

Commitment of truant boy as a vagrant. People ex rel. Aikens v. State Ind. School, 33 Misc. 396.

Subd. 4. People v. Angie, 74 App. Div. 539.

Subd. 6. People ex rel. Tully v. Fallon, 73 App. Div. 471.

§ 292. Certain employment of a child.

A person who employs or causes to be employed, or who exhibits, uses, or has in custody, or trains for the purpose of the exhibition, use or employment of, any child actually or apparently under the age of sixteen years; or who having the care, custody or control of such a child as parent, relative, guardian, employer, or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting, either

1. As a rope or wire walker, gymnast, wrestler, contortionist, rider or acrobat; or upon any bicycle or similar mechanical vehicle or contrivance; or,

2. In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or in peddling; or

3. In singing; or dancing; or playing upon a musical instrument; or in a theatrical exhibition; or in any wandering occupation; or,

4. In any illegal, indecent or immoral exhibition or practice, or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child, is guilty of a misdemeanor. But this section does not apply to the employment of any child as a singer or musician in a church, school or academy; or in teaching or learning the science or practice of music; or as a musician in any concert or in a theatrical exhibition, with the written consent of the mayor of the city, or the president of the board of trustees of the village where such concert or exhibition takes place. Such consent shall not be given unless forty-eight hours' previous notice of the application shall have been served in writing upon the society mentioned in section two hundred and ninety-three of the Penal Code, if there be one within the county, and a hearing had thereon if requested, and shall be revocable at the will of the authority giving it. It shall specify the name of the child, its age, the names and residence of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition. But no such consent shall be deemed to authorize any violation of the first, second, fourth or fifth subdivisions of this section.

Am'd by ch. 46 of 1884, ch. 31 of 1886, ch. 309 of 1892.

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People ex rel. Van Riper v. Cath. Pro., 158 N. Y. 608; 5 N. Y. Cr. Rep. 502; 11 N. Y. St. Rep. 155; People ex rel. Horton v. Fuller, 41 App. Div. 406; People v. Warden of Prison, 157 N. Y. 148; Matter of Stevens, 70 Hun, 244; 54 N. Y. St. Rep. 560; People v. Ewer, 141 N. Y. 129; 56 N. Y. St. Rep. 668, aff'g 70 Hun, 239; 54 N. Y. St. Rep. 348; People v. Grant, 70 Hun, 234; 54 N. Y. St. Rep. 849; Matter of Roach, 18 Week. Dig. 514; Ryan v. Buchanan, 37 Hun, 425; Society, etc. v. Diers, 10 Abb. N. S. 216; People ex rel. Mt. M. School v. Dickson, 123 N. Y. 639, aff'g 57 Hun, 814; 32 N. Y. St. Rep. 496; 10 N. Y. Supp. 605; Matter of Donohoe, 1 Abb. N. C. 1.

Appeal Court of Appeals. People v. Malone, 169 N. Y. 568, dis. appeal 63 App. Div. 117.

Begging. People v. Malone, 63 App. Div. 117.

§ 292a. Penalty for sending messenger boys to certain places.

A corporation or person employing messenger boys who:

1. Knowingly places or permits to remain in a disorderly house, or in an unlicensed saloon, inn, tavern or other unlicensed place where malt or spirituous liquors or wines are sold, any instrument or device by which communication may be had between such disorderly house, saloon, inn, tavern or unlicensed place, and any office or place of business of such corporation or person; or

2. Knowingly sends or permits any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern, or other unlicensed place, where malt or spirituous liquors or wines are sold on any errand or business whatsoever except to deliver telegrams at the door of such house, is guilty of a misdemeanor, and incurs a penalty of fifty dollars to be recovered by the district attorney.

Added by ch. 692 of 1893.

§ 292b. Taking apprentice without consent of guardian.

A person who takes an apprentice without having first obtained the consent of his legal guardian or unless a written agreement has been entered into as prescribed by law, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 293. Duty of officers of society.

A constable or police officer must, and any agent or officer of any incorporated society for the prevention of cruelty to children may, arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this chapter and any minor coming within any of the descriptions of children mentioned in section two hundred and ninety-one, or in section two hundred and ninety-two. Such constable, police officer or agent may interfere to prevent the perpetration in his presence of any act forbidden by this chapter. A person who obstructs or interferes with any officer or agent of such society, in the exercise of his authority under this chapter, is guilty of a misdemeanor. All fines, penalties and forfeitures imposed or collected for a violation of the provisions of this Code or of any act relating to or affecting children, now in force or hereafter passed, must be paid on demand to the incorporated society for the prevention of cruelty to children in every case where the prosecution shall be

instituted or conducted by such a society; and any such payment heretofore made to any such society may be retained by it.

Am'd by ch. 145 of 1888.

See § 56, Code Civ. Pro.

People ex rel. N. Y. S. P. O. C. C. v. Gilmore, 88 N. Y. 626, rev'g 26 Hun, 9; People v. Strickland, 13 Abb. N. C. 473; People v. N. Y. S. P. O. C. C., 19 Misc. 564; People v. N. Y. S. P. O. C. C., 25 Misc. 54; Davis v. Society, etc., 16 Abb. Pr. (N. S.) 73.

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CONCEALING DEATH OF INFANTS. §§ 294, 295

CHAPTER IV.

Abortion and Concealing Death of Infants.

- Sec. 294. Abortion defined.
 - 295. Killing of child in attempting miscarriage.
 - 296. Concealing birth.
 - 297. Selling drugs, etc.

§ 294. Abortion defined.

A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug or substance; or

2. Uses, or causes to be used, any instrument or other means;

Is guilty of abortion, and is punishable by imprisonment in a state prison for not more than four years, or in a county jail for not more than one year.

See §§ 191, 295, 318, Penal Code.

Who is principal. *People v. Bliven*, 112 N. Y. 79; 20 N. Y. St. Rep. 486; 6 N. Y. Cr. Rep. 385, aff'g 14 N. Y. St. Rep. 496.

What does not constitute. *People v. Phelps*, 133 N. Y. 260; 44 N. Y. St. Rep. 910, aff'g 61 Hun, 115; 39 N. Y. St. Rep. 598; 15 N. Y. Supp. 440. Accessory. *People v. Phelps*, *supra*.

Accomplice. *People v. Meyers*, 107 N. Y. 671; 12 N. Y. St. Rep. 862, aff'g 5 N. Y. Cr. Rep. 120; 7 N. Y. St. Rep. 217; *People v. Vedder*, 98 N. Y. 630; 8 N. Y. Cr. Rep. 32, aff'g 84 Hun, 480; 8 N. Y. Cr. Rep. 23.

Burden of proof. *Bradford v. People*, 20 Hun, 300.

Evidence. *People v. Murphy*, 101 N. Y. 126; 3 How. Pr. (N. S.) 469; 4 N. Y. Cr. Rep. 95, rev'g 3 N. Y. Cr. Rep. 388; *Swan v. People*, 13 Week. Dig. 518; *People v. Conrad*, 102 App. Div. 566.

See also *People v. Van Zile*, 73 Hun, 536; *Lohman v. People*, 1 N. Y. 388; *Hunt v. People*, 8 Park. 569; *Frazer v. People*, 54 Barb. 306; *Evans v. People*, 49 N. Y. 87.

See ch. 844 of 1907. Practice of medicine.

§ 295. Killing of child in attempting miscarriage.

A pregnant woman, who takes any medicine, drug, or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprisonment for not less than one year, nor more than four years.

See §§ 190, 191, 194, ante.

People v. McGonegal, 136 N. Y. 76; 48 N. Y. St. Rep. 900; *People v. Vedder*, 98 N. Y. 630; 8 N. Y. Cr. Rep. 29, aff'g 34 Hun, 281; *Bradford v. People*, 20 Hun, 300; *People v. Meyers*, 5 N. Y. Cr. Rep. 126; 7 N. Y. St. Rep. 217; *Eckhart v. People*, 22 Hun, 525; *People v. Phelps*, 61 Hun, 115; 15 N. Y. Supp. 441; 39 N. Y. St. Rep. 599; *Laroque v. Conheim*, 42 Misc. 613.

See ch. 844 of 1907. Practice of medicine.

§ 296. Concealing birth.

A person who endeavors to conceal the birth of a child, by any disposition of the dead body of the child, whether the child died before or after its birth, is guilty of a misdemeanor.

See § 693, post.

§ 297. Selling drugs, etc.

A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.

See §§ 191, 318, 321, Penal Code.

See ch. 344 of 1907. Practice of medicine.

BIGAMY, INCEST, CRIMES AGAINST NATURE. §§ 298, 299

CHAPTER V.

Bigamy, Incest and the Crimes against Nature.

- Sec. 298. Bigamy defined; how punished.
- 296. Id.; exceptions.
- 300. Indicting for bigamy.
- 301. Punishment of consort.
- 302. Incest.
- 303. Sodomy.
- 304. Penetration sufficient.

§ 298. Bigamy defined; how punished.

A person who, having a husband or a wife living, marries another person, is guilty of bigamy, and is punishable by imprisonment in a penitentiary or state prison for not more than five years.

What constitutes. *People v. Faber*, 92 N. Y. 146; 1 N. Y. Cr. Rep. 115, rev'd 29 Hun, 320; overrules *People v. Hovey*, 5 Barb. 117.

When punishable in this state. *People v. Mosher*, 2 Park. 195, approved, *Van Voorhis v. Brintall*, 86 N. Y. 31; *People v. Merrill*, 2 Park. 590.

Extra-territorial effect, judgment for divorce. *People v. Chase*, 28 Hun, 310; 16 Week. Dig. 143.

Second marriage. *Hayes v. People*, 25 N. Y. 390; 5 Park. 325; 24 Abb. Pr. 452; 15 Abb. 163; *People v. Baker*, 76 N. Y. 78, rev'd 15 Hun, 256.

Second marriage out of state. *People v. Mosher*, supra.

Proof. *People v. Humphrey*, 7 Johns. 814.

See also *Thorp v. Thorp*, 90 N. Y. 602; *Moore v. Hegeman*, 92 N. Y. 521; *People v. Weed*, 96 N. Y. 625, aff'd 29 Hun, 628; *Price v. Price*, 124 N. Y. 589; 37 N. Y. St. Rep. 146, rev'd 54 Hun, 349; 27 N. Y. St. Rep. 110; 7 N. Y. Supp. 474.

§ 299. Id.; exceptions.

The last section does not extend,

1. To a person whose former husband or wife has been absent for five years successively then last past, without being known to him or her within that time to be living, and believed by him or her to be dead; or

2. To a person whose former marriage has been pronounced void, or annulled, or dissolved, by the judgment of a court of competent jurisdiction, for a cause other than his or her adultery; or

3. To a person who being divorced for his or her adultery has received from the court which pronounced the divorce, permission to marry again; or

4. To a person whose former husband or wife has been sentenced to imprisonment for life.

People v. Weed, 96 N. Y. 625, aff'd 29 Hun, 628; 1 N. Y. Cr. Rep. 349; *Price v. Price*, 124 N. Y. 596; 37 N. Y. St. Rep. 147, rev'd 54 Hun, 349; 27 N. Y. St. Rep. 110; 7 N. Y. Supp. 474; *Wait v. Wait*, 4 N. Y. 95; *People v. Baker*, 76 N. Y. 78; *People v. Meyer*, 8 N. Y. St. Rep. 256; *Fleming v. People*, 27 N. Y. 320; *Gallaghan v. People*, 1 Park. 378; *Karstens v. Karstens*, 20 Misc. 250; *People v. Faber*, 92 N. Y. 146; 1 N. Y. Cr. Rep. 115, rev'd 29 Hun, 320; *People v. Hovey*, 5 Barb. 117.

§ 300. Indicting for bigamy.

An indictment for bigamy may be found in the county in which the defendant is arrested, and the like proceedings, including the trial, judgment and conviction, may be had in that county, as if the offense were committed therein.

See §§ 299 and 376, Penal Code.

People v. Mosher, 2 Park. 195; Collins v. People, 1 Hun, 610; 4 T. & C. 77; King v. People, 5 Hun, 297; Houser v. People, 46 Barb. 38.

§ 301. Punishment of consort.

A person who knowingly enters into a marriage with another, which is prohibited to the latter by the foregoing provisions of this chapter, is punishable by imprisonment in a penitentiary or state prison, for not more than five years, or by a fine of not more than one thousand dollars, or both.

Blake v. Everman, 56 Hun, 454; 10 N. Y. Supp. 74; 31 N. Y. St. Rep. 355; Sauser v. People, 8 Hun, 304; People v. Lake, 110 N. Y. 68; 10 N. Y. St. Rep. 381.

§ 302. Incest.

When persons, within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, intermarry or commit adultery or fornication with each other, each of them is punishable by imprisonment for not more than ten years.

Not retroactive. Weisberg v. Weisberg, 112 App. Div. 231.

People v. Lake, 110 N. Y. 61; 16 N. Y. St. Rep. 197, aff'd 10 N. Y. St. Rep. 381; People v. Harriden, 1 Park. 346; People v. Powell, 4 N. Y. Cr. Rep. 586; People v. Vedder, 98 N. Y. 630; 3 N. Y. Cr. Rep. 32, aff'd 34 Hun, 480; 3 N. Y. Cr. Rep. 23.

§ 303. Sodomy.

A person who carnally knows in any manner any animal or bird; or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body is guilty of sodomy and is punishable with imprisonment for not more than twenty years.

Am'd by ch. 31 of 1886, ch. 325 of 1892.

See §§ 34, 280, Penal Code.

When conviction not sustained. People v. Deschessere, 69 App. Div. 217.

§ 304. Penetration sufficient.

Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section.

See § 280, ante.

CHAPTER VI.

Violating Sepulture and the Remains of the Dead.

- Sec. 305. Right to direct disposal of one's own body after death.
 306. Duty of burial.
 307. Burial in other states.
 308. Dissection, when allowed.
 309. Unlawful dissection a misdemeanor.
 310. Remains after dissection must be buried.
 311. Body stealing.
 312. Receiving stolen body.
 313. Opening grave.
 314. Arresting or attaching a dead body.
 315. Disturbing funerals.

§ 305. Right to direct disposal of one's own body after death.

A person has the right to direct the manner in which his body shall be disposed of after his death; and also to direct the manner in which any part of his body, which becomes separated therefrom during his lifetime, shall be disposed of; and the provisions of this chapter do not apply to any case where a person has given directions for the disposal of his body or any part thereof inconsistent with those provisions.

Wehle v. U. S. Mut. Accident Assn., 11 Misc. 38; Rowland v. Miller, 15 N. Y. Supp. 703; 39 N. Y. St. Rep. 117; Johnston v. Marinus, 18 Abb. N. C. 72.

§ 306. Duty of burial.

Except in the cases in which a right to dissect it is expressly conferred by law, every dead body of a human being, lying within this state must be decently buried within a reasonable time after death.

Rousseau v. City of Troy, 49 How. Pr. 492; Rowland v. Miller, 15 N. Y. Supp. 703; 39 N. Y. St. Rep. 117; Snyder v. Snyder, 60 How. 368; Copper's case, 58 How. 55; Johnston v. Marinus, 18 Abb. N. C. 72; Patterson v. Patterson, 59 N. Y. 583.

§ 307. Burial in other states.

The last section does not impair any right to carry the dead body of a human being through this state, or to remove from this state the body of a person dying within it, for the purpose of burying the same elsewhere.

§ 308. Dissection, when allowed.

The right to dissect the dead body of a human being exists in the following cases:

1. In the cases prescribed by special statutes;
2. Whenever a coroner is authorized by law to hold an inquest upon the body, so far as such coroner authorizes dissection for the purposes of the inquest, and no further;

3. Whenever and so far as the husband, wife or next of kin of the deceased, being charged by law with the duty of burial, may authorize dissection for the purpose of ascertaining the cause of death, and no further.

4. Whenever any district attorney in this state, in the discharge of his official duties, shall deem it necessary, he may exhume, take possession of, and remove the body of a deceased person, or any portion thereof, and submit the same to a proper physical or chemical examination, or analysis, to ascertain the cause of death, and the same shall be made on the order of any justice of the supreme court of this state, or the county judge of the county in which such dead body shall be, which order shall be made on the application of the district attorney with or without notice to the relatives of the deceased person, or to any person or corporation having the legal charge of such body, as the court may direct. Said district attorney shall have power to direct the sheriff, constable or other peace officer in this state, or to employ such person or persons as he may deem necessary to assist him in exhuming, removing, obtaining possession of and examining physically or chemically such dead body or any portion thereof. The expense therefor shall be a county charge, to be paid by the county treasurer on the certificate of the district attorney.

Am'd by ch. 500 of 1889.

See § 773, Code Crim. Pro.

Foley v. Phelps, 1 App. Div. 553; People v. Fitzgerald, 105 N. Y. 152; 5 N. Y. Cr. Rep. 342; 6 N. Y. St. Rep. 828, rev'g 43 Hun, 35; 6 N. Y. St. Rep. 509; Wehle v. U. S. Mut. Accident Assn., 11 Misc. 38; Crisfield v. Perine, 81 N. Y. 622, aff'g 15 Hun, 202; Rhodes v. Brandt, 21 Hun, 1.

§ 309. Unlawful dissection a misdemeanor.

A person who makes, or causes or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

Wehle v. U. S. Mut. Accident Assn., 11 Misc. 38; Foley v. Phelps, 1 App. Div. 553.

§ 310. Remains after dissection must be buried.

In all cases in which a dissection has been made, the provisions of this chapter, requiring the burial of a dead body, and punishing interference with or injuries to it, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

§ 311. Body stealing.

A person who removes the dead body of a human being, or any part thereof, from a grave, vault, or other place, where the same has been buried, or from a place where the same has been deposited while awaiting burial, without authority of law, with intent to sell the same, or for the purpose of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is punishable by imprisonment for not

more than five years or by a fine not exceeding one thousand dollars, or both.

Rhodes v. Brandt, 21 Hun, 1; **People v. Fitzgerald**, 105 N. Y. 152; 5 N. Y. Cr. Rep. 342; 6 N. Y. St. Rep. 828, rev'd 43 Hun, 35; 6 N. Y. St. Rep. 599; **People v. Thomsen**, 8 N. Y. Cr. Rep. 562; 21 Week. Dig. 346; Matter of Board on Street Opening, etc., 183 N. Y. 335, aff'd 45 N. Y. St. Rep. 216; **Wehle v. U. S. Mut. Accident Assn.**, 11 Misc. 42.

§ 312. Receiving stolen body.

A person who purchases, or receives except for the purpose of burial, the dead body of a human being, or any part thereof, knowing that the same has been removed contrary to the last section, is punishable by imprisonment for not more than three years.

§ 313. Opening grave.

A person who opens a grave or other place of interment, temporary or otherwise, or a building wherein the dead body of a human being is deposited while awaiting burial, without authority of law, with intent to remove the body, or any part thereof, for the purpose of selling it or demanding money for the same, or for the purpose of dissection, or from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or any thing attached thereto, or any vestment, or other article interred, or intended to be interred with the dead body, is punishable by imprisonment for not more than two years, or by a fine of not more than two hundred and fifty dollars or by both.

See § 311, ante.

Coates v. New York City, 7 Cow. 585; **Rhodes v. Brandt**, 21 Hun, 1.

§ 314. Arresting or attaching a dead body.

A person who arrests or attaches the dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

Rowland v. Miller, 15 N. Y. Supp. 703; 39 N. Y. St. Rep. 117.

§ 315. Disturbing funerals.

A person who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying the dead body of a human being to a place of burial, is guilty of a misdemeanor.

CHAPTER VII.

Indecent Exposures, Obscene Exhibitions, Books, and Prints, and Bawdy and other Disorderly Houses.

- Sec. 316. Exposure of person.
317. Possessing, etc., obscene prints.
318. Indecent articles, etc.
319. Mailing, carrying obscene print, etc.
320. Warrant to sheriff to search, etc.
321. Physician's instruments.
322. Keeping disorderly houses, etc.

§ 316. Exposure of person.

A person who willfully and lewdly exposes his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another so to expose himself, is guilty of a misdemeanor.

People v. Webster, 86 Hun, 70; People v. Police Comrs., 13 App. Div. 70;
People v. Bixby, 67 Barb. 221; 4 Hun, 636; Miller v. People, 5 Barb. 203.

§ 317. Possessing, etc., obscene prints.

1. A person who sells, lends, gives away or shows, or offers to sell, lend, give away, or show, or has in his possession with intent to sell, lend or give away, or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures, or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story paper, writing, paper, figure, image, matter, article or thing, or who writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means any, or what purports to be any, obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing, named in this section can be purchased, obtained or had or who has in his possession, any slot machine or other mechanical contrivance with moving pictures of nude or partly denuded female figures which pictures are lewd, obscene, indecent or immoral, or other lewd, obscene, indecent or immoral drawing, image, article or object, or who shows, advertises or exhibits the same, or causes the same to be shown, advertised, or exhibited, or who buys, owns or holds any such machine with the intent to show, advertise or in any manner exhibit the same, or who,

2. Prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; or who

3. In any manner, hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them is guilty of a misdemeanor, and, upon conviction, shall be sentenced to not less than ten days nor more than one year imprisonment, or be fined not less than fifty dollars nor more than one thousand dollars, or both, for each offense.

Am'd by ch. 380 of 1884, and ch. 692 of 1887.

Subd. 1 am'd by ch. 731 of 1900.

People v. Kauffman, 14 App. Div. 306; **People v. Muller**, 96 N. Y. 418; 2 N. Y. Cr. Rep. 380, aff'g 32 Hun, 209; 2 N. Y. Cr. Rep. 283; 19 Week. Dig. 258; **People v. Dahany**, 63 Hun, 580; 45 N. Y. St. Rep. 98; 18 N. Y. Supp. 467; **People v. Hallenbeck**, 52 How. Pr. 502; **United States v. Bennett**, 2 N. Y. Cr. Rep. 284.

"Indecent." **People v. Eastman**, 188 N. Y. 478.

§ 318. Indecent articles, etc.

A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of conception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section 317 of this Code.

Am'd by ch. 692 of 1887.

Halstead v. Nelson, 36 Hun, 153.

See ch. 344 of 1907. Practice of medicine.

§ 319. Mailing, carrying obscene print, etc.

A person who deposits, or causes to be deposited, in any post-office within the state, or places in charge of an express company, or of a common carrier, or other person, for transportation, any of the articles or things specified in the last two sections, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or willfully receives

the same, with intent to carry or convey, or knowingly or willfully carries or conveys the same, by express, or in any other manner except in the United States mail, is guilty of a misdemeanor.

Halstead v. Nelson, 36 Hun, 153.

§ 320. Warrant to sheriff to search, etc.

A magistrate having jurisdiction to issue warrants in criminal cases, upon complaint that any person within his jurisdiction is offending against the provisions of this chapter, supported by oath or affirmation, must issue a warrant, directed to the sheriff or to any constable, marshal, or police officer within the county, directing him to search for, seize, and take possession of any of the articles specified in this chapter, in the possession of the person against whom complaint is made. The magistrate must immediately transmit every article seized by virtue of the warrant, to the district attorney of the county, who must, upon the conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had.

§ 321. Physician's instruments.

An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this chapter. The supplying of such articles to such physicians or by their direction, or prescription, is not an offense under this chapter.

§ 322. Keeping disorderly houses, etc.

A person who keeps a house of ill-fame or assignation of any description, or a house or place for persons to visit for unlawful sexual intercourse, or for any lewd, obscene or indecent purpose, or disorderly house, or a house commonly known as a stale beer dive, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who requests, advises or procures any female to become an inmate of any such house or place, or who as agent or owner, lets a building or any portion of a building, knowing that it is intended to be used for any purpose specified in this section, or who permits a building or a portion of a building to be so used, is guilty of a misdemeanor. This section shall be construed to apply to any part or parts of a house used for any of the purpose herein specified.

Am'd by ch. 690 of 1887 and ch. 270 of 1905.

See §§ 385, subd. 2, 621, post; § 899, Code Crim. Pro.

The keeping of a disorderly house or the leasing of a house with such an intent, was a misdemeanor at common law. *People ex rel. Van Houten v. Sadler*, 97 N. Y. 146; *People v. Erwin*, 4 Den. 129; *Lowenstein v. People*, 54 Barb. 289; *Plath v. Kline*, 18 App. Div. 240; *Arras v. Richardson*, 24 N. Y. St. Rep. 742; *Jacobowsky v. People*, 6 Hun, 524, aff'd, 64 N. Y. 659; *King v. People*, 83 N. Y. 587; *People v. O'Melia*, 51 N. Y. St. Rep. 388; 22 N. Y. Supp. 465.

A disorderly house is a common nuisance. Ely v. Supervisors, 36 N. Y. 300; 46 Barb. 659; Lawton v. Steele, 119 N. Y. 238; 29 N. Y. St. Rep. 581; Barnesciotta v. People, 10 Hun, 137; 69 N. Y. 612.

Evidence. The character of the house cannot be proved by general reputation. People v. Mauch, 24 How. Pr. 276.

Notice to landlord of use to which property was put. People v. Wallach, 39 N. Y. St. Rep. 531; 15 N. Y. Supp. 226.

General reputation of the visitants of the alleged disorderly house is admissible. People v. Hulett, 15 N. Y. Supp. 630; 39 N. Y. St. Rep. 647.

Indictment. People v. Klock, 16 N. Y. St. Rep. 565; People v. Hatter, 22 N. Y. Supp. 688; People v. Hulett, 15 N. Y. Supp. 630; 39 N. Y. St. Rep. 647.

Information. People v. Miller, 81 App. Div. 255.

See People ex rel. Penny v. Board of Excise, 17 Misc. 98.

CHAPTER VIII.

Lotteries.

- Sec. 323. " Lottery " defined.
 324. Lottery declared a public nuisance.
 325. Contriving, drawing, etc., lottery.
 326. Selling lottery tickets.
 327. Advertising lotteries.
 328. Offering property for disposal dependent upon the drawing of any lottery.
 329. Keeping office, etc., for registry.
 330. Insuring lottery tickets, etc.
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 332. Property offered for disposal in lotteries, forfeited.
 333. Letting building for lottery purposes.
 334. Lotteries out of this state.
 335. Advertisements by persons out of the state.
 335a. Gift sales of food.

§ 323. " Lottery " defined.

A lottery is a scheme for the distribution of property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise or by some other name.

People v. Gillison, 109 N. Y. 389; Staub v. Myers, 16 App. Div. 478; People v. Noelke, 94 N. Y. 137; 1 N. Y. Cr. Rep. 252, rev'd 29 Hun, 469; Irving v. Britton, 8 Misc. 202; Riley v. Gray, 77 Hun, 408; People v. Fuerst, 13 Misc. 307; People v. Dewey, 33 N. Y. St. Rep. 427; Gov. of Alms House v. Am. Art. Union, 7 N. Y. 228; Hull v. Ruggles, 56 N. Y. 424; Wilkinson v. Gill, 74 N. Y. 66; Negley v. Devlin, 12 Abb. (N. S.) 210; Grover v. Morris, 73 N. Y. 473; People v. Runge, 3 N. Y. Cr. Rep. 85; Kohn v. Koehler, 96 N. Y. 362, aff'd 21 Hun, 466; People v. Payne, 3 Den. 80; Almy v. McKinney, 5 N. Y. St. Rep. 267; People ex rel. Lawrence v. Fallon, 152 N. Y. 12, aff'd 4 App. Div. 83; People v. Klock, 48 Hun, 27; 16 N. Y. St. Rep. 568; Berry v. People, 1 N. Y. Cr. Rep. 43; People v. Hulett, 39 N. Y. St. Rep. 647; 15 N. Y. Supp. 630; People ex rel. Van Houton v. Sadler, 97 N. Y. 146; 3 N. Y. Cr. Rep. 473; Ely v. Suprs., 86 N. Y. 297; Lawton v. Steele, 119 N. Y. 289; 29 N. Y. St. Rep. 58; People v. Hatter, 22 N. Y. Supp. 688; People ex rel. Ellison v. Lavin, 179 N. Y. 164, rev'd 93 App. Div. 292.

§ 324. Lottery declared a public nuisance.

A lottery is unlawful and a public nuisance.

Lotteries, etc., prohibited. Art. 1, § 9, N. Y. Const. See §§ 334, 385, post. People v. Dewey, 33 N. Y. St. Rep. 427; Goodrich v. Houghton, 134 N. Y. 115; 45 N. Y. St. Rep. 763, aff'd 55 Hun, 526; 29 N. Y. St. Rep. 906; 9 N. Y. Supp. 214; People v. Gillison, 109 N. Y. 404; People v. Noelke, 94 N. Y. 137; 1 N. Y. Cr. Rep. 498, aff'd 29 Hun, 469; 1 N. Y. Cr. Rep. 252.

§ 325. Contriving, drawing, etc., lottery.

A person who contrives, proposes or draws a lottery, or assists in contriving, proposing or drawing the same, is punishable by imprisonment for not more than two years, or by fine of not more than one thousand dollars, or both.

See §§ 323, 324, ante.

People v. Wolf, 14 App. Div. 74; **People v. Payne**, 3 Den. 88; **Matter of Dwyer**, 14 Misc. 204; **People v. Runge**, 3 N. Y. Cr. Rep. 88; **Goodrich v. Houghton**, 134 N. Y. 115; 45 N. Y. St. Rep. 764, aff'g 55 Hun, 526; 29 N. Y. St. Rep. 905; 9 N. Y. Supp. 214.

§ 326. Selling lottery tickets.

A person who sells, gives, or in any way whatever furnishes or transfers, to or for another, a ticket, chance, share, or interest, or any paper, certificate, or instrument, purporting to be or to represent a ticket, chance, share, or interest, in or dependent upon the event of a lottery, to be drawn within or without this state, is guilty of a misdemeanor.

See § 334, post.

Pickett v. People, 67 N. Y. 609, aff'g 8 Hun, 88; **People v. Emerson**, 6 N. Y. Cr. Rep. 161; 20 N. Y. St. Rep. 18; **Goodrich v. Houghton**, 134 N. Y. 115; 45 N. Y. St. Rep. 764, aff'g 55 Hun, 529; 29 N. Y. St. Rep. 907; 9 N. Y. Supp. 215; **People v. Noelke**, 94 N. Y. 137; 1 N. Y. Cr. Rep. 498, aff'g 29 Hun, 469; 1 N. Y. Cr. Rep. 252; **People v. Wolf**, 14 App. Div. 78; **People v. Hooghkerk**, 96 N. Y. 149; 67 How. Pr. 264.

§ 327. Advertising lotteries.

A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an account of a lottery, whether within or without the state, stating how, when or where the same is to be, or has been, drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained, is guilty of a misdemeanor.

See § 334, post.

Ormes v. Dauchy, 82 N. Y. 443; **People v. Charles**, 1 N. Y. 180; 3 Den. 212; **People v. England**, 27 Hun, 139; **Van Valkenberg v. Torrey**, 7 Cow. 255; **People v. Hart**, 28 Hun, 396; **People v. Emerson**, 6 N. Y. Cr. Rep. 161; 20 N. Y. St. Rep. 18; 5 N. Y. Supp. 376; **Goodrich v. Houghton**, 134 N. Y. 115; 45 N. Y. St. Rep. 764, aff'g 55 Hun, 529; 29 N. Y. St. Rep. 907; 9 N. Y. Supp. 215; **People ex rel. Ellison v. Lavin**, 179 N. Y. 164, rev'g 93 App. Div. 292.

§ 328. Offering property for disposal dependent upon the drawing of any lottery.

A person who offers for sale or distribution, in any way, real or personal property, or any interest therein, to be determined by lot or chance, dependent upon the drawing of a lottery within or without this state, or who sells, furnishes, or procures, or causes to be sold, furnished, or procured, in any manner, a chance or share, or any interest in property offered for sale or distribution, in violation of this chapter, or a ticket or other evidence of such a chance, share, or interest, is guilty of a misdemeanor.

People v. Emerson, 6 N. Y. Cr. Rep. 161; 20 N. Y. St. Rep. 18; 5 N. Y. Supp. 376; **Goodrich v. Houghton**, 134 N. Y. 115; 45 N. Y. St. Rep. 764, aff'g 55 Hun, 529; 29 N. Y. St. Rep. 907; 9 N. Y. Supp. 215.

§ 329. Keeping office, etc., for registry.

A person who opens, sets up, or keeps, by himself or another person, an office or other place for registering the numbers of tickets in a lottery within or without this state, or for making,

receiving, or registering any bets or stakes for the drawing, or result of such a lottery, or who advertises or in any way publishes any account of an opening, setting up, or keeping of such an office or place, is guilty of a misdemeanor.

People v. Emerson, 6 N. Y. Cr. Rep. 161; 20 N. Y. St. Rep. 18; 5 N. Y. Supp. 376; Goodrich v. Houghton, 134 N. Y. 115; 45 N. Y. St. Rep. 764, aff'g 55 Hun, 529; 29 N. Y. St. Rep. 907; 9 N. Y. Supp. 215; People v. Jackson, 3 Den. 101.

§ 330. Insuring lottery tickets, etc.

A person who insures, or receives any consideration for insuring, for or against the drawing of a ticket, share, or interest in a lottery, or of a number of such a ticket, share or interest, or who receives any valuable consideration upon an agreement to pay money, or deliver property, in the event that a ticket, share, or interest, or a number of such a ticket, share, or interest in a lottery, shall prove fortunate or unfortunate, or shall be drawn or not drawn in a particular way or in a particular order, or who promises or agrees, or offers to pay money, or to deliver property, or to do, or forbear to do, any thing for the benefit of any person, with or without consideration, upon any accident or contingency dependent on the drawing thereof, or of any number or ticket therein, is guilty of a misdemeanor.

See also cases under § 329, ante.

§ 331. Advertising offers to insure lottery tickets.

A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an offer, notice, or proposition, in violation of the last section, is guilty of a misdemeanor.

See cases cited under § 329.

§ 332. Property offered for disposal in lotteries, forfeited.

All property offered for sale, or distribution, in violation of the provisions of this chapter, is forfeited to the people of this state, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective district attorneys, to demand, sue for and recover, in behalf of the people, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury, for the benefit of the poor.

People v. Phillips, 30 Hun, 553. See also cases cited under § 329.

§ 333. Letting building for lottery purposes.

A person who lets, or permits to be used any building or portion of a building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor.

Adelmuth v. McGarren, 4 Daly, 467. See cases cited under § 329.

§ 334. Lotteries out of this state.

The provisions of this chapter are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

See §§ 326, 327, ante.

People v. Warner, 4 Barb. 314. See cases cited under § 329.

§ 335. Advertisements by persons out of the state.

The provisions of sections 327 and 331 are applicable, whenever the advertisement was published, or the letter or circular sent or delivered through or in this state, though the person causing or procuring the same to be published, sent or delivered, was out of the state at the time of so doing.

See cases cited under § 329.

§ 335a. Gift sales of food.

No person shall sell, exchange or dispose of any article of food or offer or attempt to do so upon any representation, advertisement, notice or inducement that any thing other than what is specifically stated to be the subject of the sale or exchange, is or is to be delivered or received or in any way connected with or a part of the transaction as a gift, prize, premium or reward to the purchaser.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, in addition thereto, shall be liable to a penalty of twenty-five dollars, to be recovered with costs by any person suing therefor in his own name.

Added by ch. 691 of 1887.

Declared unconstitutional. People v. Gillson, 109 N. Y. 389; 16 N. Y. St. Rep. 185. See also People v. Rosenberg, 67 Hun, 53; 51 N. Y. St. Rep. 189.

CHAPTER IX.

Gaming.

- Sec. 336. Keeping gambling apparatus in certain places.**
337. Punishment.
 337a. Keeping slot machines.
 337b. Seizures of slot machines and arrests thereon.
 337c. Slot machines to be destroyed by magistrates in certain cases.
 337d. Slot machines to be destroyed by the trial court in certain cases.
 338. Gambling apparatus declared a nuisance.
 339. Winning at play by fraudulent means.
 340. Exacting payment of money won at play.
 341. Winning or losing upward of twenty-five dollars.
 342. Witness' privilege.
 343. Keeping gaming and betting establishments.
 344. Common gambler, etc.
 344a. Keeping place for playing policy, etc.
 344b. Possessing policy slip, etc.
 344c. Removing person occupying premises used for playing policy.
 345. Seizure of gambling implements authorized.
 346. Such implements to be destroyed or delivered to district attorney.
 347. Such implements to be destroyed upon conviction.
 348. Persuading another person to visit gambling places.
 349. Certain officers directed to prosecute offenses under this chapter.
 350. Duty of masters to suppress gambling on board their vessels.
 351. Pool selling, bookmaking, bets and wagers, etc.
 352. Racing of animals for stake.

§ 336. Keeping gambling apparatus in certain places.

It is unlawful to keep or use any table, cards, dice or any other article or apparatus whatever, commonly used or intended to be used in playing any game of cards or faro, or other game of chance upon which money is usually wagered, at any of the following places:

1. Within a building, or the appurtenances or grounds connected with any building, in which a court of justice usually holds its sessions; or a building, any part of which is usually occupied by a religious corporation, or an incorporated benevolent, charitable, scientific or missionary society, or an incorporated academy, high school, college or other institution of learning, a library company, or building and mutual loan company;

2. Within any building, or the appurtenances or grounds connected with any building, while votes are received or canvassed therein at any election for an officer of this state, or of the United States; or while any public meeting is held therein;

3. Within the distance of one mile from the grounds upon which any training, review, drill or exercise of a military organization, created or permitted by the laws of this state, is proceeding, or upon which any public fair, exhibition, exercise or meeting is held in the open air; or

4. Within any vessel lying in, or navigating, any of the waters of this state; or owned, or navigated by, or for account of any corporation created by the laws of this state.

See § 275, subd. 2, ante.

Rockwood v. Oakfield, 2 N. Y. St. Rep. 381; *Murphy v. Board*, etc., 11 Abb. N. C. 340; *Steinhart v. Farrell*, 3 N. Y. St. Rep. 292; *Lyner's case*, 5 C. H. Rec. 156; *People v. Kelly*, 3 N. Y. Cr. Rep. 272; *Hitchens v. People*,

20 N. Y. 451; Cascadden's case, 2 C. H. Rec. 53; People v. Harrison, 28 How. 347; Harris v. White, 81 N. Y. 532; People v. Cutler, 28 Hun, 465; 1 N. Y. Cr. Rep. 178; People v. Todd, 51 Hun, 448; 4 N. Y. Supp. 26; 6 N. Y. Cr. Rep. 220; 21 N. Y. St. Rep. 401; Story v. Solomon, 71 N. Y. 420; People v. Sergeant, 8 Cow. 139.

§ 337. Punishment.

A person who knowingly violates the last section is guilty of a misdemeanor.

People v. Todd, 51 Hun, 448; 21 N. Y. St. Rep. 401; 4 N. Y. Supp. 26.

§ 337a. Keeping slot machines.

Any person who has in his possession, or under his control, or who permits to be placed, maintained or kept in any room, space, inclosure or building, owned, leased or occupied by him, or under his management or control, any machine, apparatus or device, into which may be, or might have been, inserted any piece of money or other object, and from which, as a result of such insertion, or as a result of such insertion and the application of physical or mechanical force, may issue, or might have issued, any piece or pieces of money, or any check or memoranda calling for any money, and which machine, apparatus or device is commonly known as a slot machine, is guilty of a misdemeanor.

Added by ch. 655 of 1899.

§ 337b. Seizures of slot machines and arrests thereon.

It shall be the duty of every officer authorized to make arrests to seize every machine, apparatus or device answering to the description contained in the last section and to arrest the person actually or apparently in possession or control thereof or of the premises in which the same may be found, if any such person be present at the time of the seizure, and to bring the machine, apparatus or device, and the prisoner, if there be one, before a committing magistrate.

Added by ch. 655 of 1899.

§ 337c. Slot machines to be destroyed by magistrates in certain cases.

The magistrate before whom any machine, apparatus or device is brought pursuant to the last section must, if there be a prisoner, and if he shall hold such prisoner, cause the machine, apparatus or device to be delivered to the district attorney of the county to be used as evidence on the trial of the said prisoner. If there be no prisoner or if the magistrate does not hold the prisoner, he must cause the immediate destruction of the machine, apparatus or device.

Added by ch. 655 of 1899.

§ 337d. Slot machines to be destroyed by the trial court in certain cases.

It shall be the duty of the district attorney of the county to see that every person held in pursuance of the last section shall be

brought to trial within thirty days from the date of his final examination before the magistrate; and the machine, apparatus or device shall be produced in court on the trial. It shall be the duty of the trial court, after the disposition of the case, and whether the defendant be convicted, acquitted or fails to appear for trial, to cause the immediate destruction of the machine, apparatus or device.

Added by ch. 655 of 1899.

§ 338. Gambling apparatus declared a nuisance.

An article or apparatus maintained or kept in violation of section 336, is a public nuisance.

See § 335, post.

People v. Todd, 51 Hun, 449; 21 N. Y. St. Rep. 401; 4 N. Y. Supp. 26.

§ 339. Winning at play by fraudulent means.

A person who, by any fraud, or false pretense whatsoever, while playing at any game, or while having a share in any wager played for, or while betting on the sides or hands of such as play, wins or acquires to himself, or to any other, a sum of money or other valuable thing, is guilty of a misdemeanor.

See § 57, Code Crim. Pro.

People v. Todd, 51 Hun, 449; 21 N. Y. St. Rep. 401; 4 N. Y. Supp. 26.

§ 340. Exacting payment of money won at play.

A person who exacts or receives from another, directly or indirectly, any money or other valuable thing, by reason of the same having been won by playing at cards, faro, or any other game of chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the money or thing so exacted or received, to be recovered in a civil action, by the persons charged with the support of the poor in the place where the offense was committed, for the benefit of the poor.

Rockwood v. Oakfield, 2 N. Y. St. Rep. 335; Gilpin v. Daly, 59 Hun, 418; 36 N. Y. St. Rep. 669; 18 N. Y. Supp. 393; People v. Todd, 51 Hun, 449; 21 N. Y. St. Rep. 401; 4 N. Y. Supp. 26.

§ 341. Winning or losing upward of twenty-five dollars.

A person who wins or loses at play or by betting, at any time, the sum or value of twenty-five dollars or upward, within the space of twenty-four hours, is punishable by a fine not less than five times the value or sum so lost, or won, to be recovered in a civil action, by the persons charged with the support of the poor in the place where the offense was committed, for the benefit of the poor.

See § 57, Code Crim. Pro.

Gideon v. Dwyer, 87 Hun, 255; Arrieta v. Morrissey, 1 Abb. (N. S.) 439; Langworthy v. Bromley, 29 How. 92; Steinhart v. Farrell, 3 N. Y. St. Rep. 222; People v. Todd, 51 Hun, 449; 21 N. Y. St. Rep. 401; 4 N. Y. Supp. 26.

§ 342. Witnesses' privileges.

No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this chapter, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Am'd by ch. 649 of 1904.

See § 712, post.

Constitutional immunity. *People ex rel. Lewisohn v. Wyatt*, 176 N. Y. 253, aff'g 81 App. Div. 51, rev'd 39 Misc. 456; *People ex rel. Lewisohn v. General Sessions*, 96 App. Div. 201.

Steinhart v. Farrell, 3 N. Y. St. Rep. 292; *Gilpin v. Daly*, 59 Hun, 416; 36 N. Y. St. Rep. 668; 13 N. Y. Supp. 392; *People v. Todd*, 51 Hun, 449; 4 N. Y. Supp. 26; 21 N. Y. St. Rep. 401.

§ 343. Keeping gaming and betting establishments.

Any corporation or association or the officers thereof or any co-partnership or individual who keeps a room, shed, tent, tenement, booth, building, float or vessel, or any part thereof to be used for gambling or for any purpose or in any manner forbidden by this chapter, or for making any wagers or bets made to depend upon any lot, chance, casualty, unknown or contingent event, or on the future price of stocks, bonds, securities, commodities or property of any description whatever or for making any contract or contracts for or on account of any money, property or thing in action, so bet or wagered, or being the owner or agent, knowingly bets or permits the same to be so used, is guilty of a misdemeanor. This section shall not be extended so as to prohibit or in any manner affect any insurance made in good faith for the security or indemnity of the party insured and which is not otherwise prohibited by law, nor to any contract on bottomry or respondentia.

Am'd by ch. 428 of 1889, ch. 571 of 1895.

People v. Van de Carr, 150 N. Y. 443; *People v. Sergeant*, 8 Cow. 139; *Gilpin v. Daly*, 59 Hun, 418; 36 N. Y. St. Rep. 669; 13 N. Y. Supp. 393; *Hutchins v. People*, 39 N. Y. 454; *Lyman v. Shenandoah Social Club*, 39 App. Div. 462; *Tanner v. Albion*, 5 Hill, 121; *Schachne v. Barnett*, 31 N. Y. St. Rep. 401; *People v. Emerson*, 53 Hun, 439; 7 N. Y. Cr. Rep. 105; 26 N. Y. St. Rep. 468; 6 N. Y. Supp. 276; *People v. Todd*, 51 Hun, 449; 21 N. Y. St. Rep. 401; 4 N. Y. Supp. 25; *People v. Mitchell*, 49 N. Y. St. Rep. 528; 21 N. Y. Supp. 166.

Dexter v. Press Pub. Co., 36 Misc. 388.

Relation of § 351. *People v. Stedeker*, 75 App. 449, rev'd 175 N. Y. 57.

§ 344. Common gambler, etc.

A person who is the owner, agent, or superintendent of a place, or of any device, or apparatus, for gambling; or who hires, or allows to be used a room, table, establishment or apparatus for such a purpose, or who engages as dealer, game-keeper, or player in any gambling or banking game, where money or property is dependent upon the result: or who sells or offers to sell what are commonly called lottery policies, or any writing, paper, or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery; or who indorses or uses a book, or other document, for the purpose of enabling others to sell, or offer to sell, lottery policies, or other

such writings, papers, or documents, is a common gambler, and punishable by imprisonment for not more than two years, or by a fine not exceeding one thousand dollars, or both.

People v. O'Malley, 52 App. Div. 46; People v. Dewey, 11 N. Y. Supp. 602; 33 N. Y. St. Rep. 427; People v. Todd, 51 Hun, 449; 21 N. Y. St. Rep. 401; People v. Emerson, 53 Hun, 440; 20 N. Y. St. Rep. 18; 6 N. Y. Supp. 276; 6 N. Y. Cr. Rep. 157; 5 N. Y. Supp. 375; 7 N. Y. Cr. Rep. 105; 25 N. Y. St. Rep. 468; People v. Borges, 6 Abb. 132; Lyman v. Shenandoah Social Club, 39 App. Div. 462; Lyman v. Brucker, 26 Misc. 597; People v. Fuerst, 18 Misc. 305; Dunn v. People, 90 N. Y. 104, rev'd 27 Hun, 272; Pickett v. People, 67 N. Y. 609, aff'd 8 Hun, 83.

§ 344a. Keeping place for playing policy, etc.

A person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing or for the sale of what are commonly called "lottery policies," or who delivers or receives money or other valuable consideration in playing policy, or in aiding in the playing thereof, or for what is commonly called a "lottery policy," or for any writing, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery; or who shall have in his possession, knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called "policy," or in the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery; or any paper, print, writing, numbers, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called "policy;" or who is the owner, agent, superintendent, janitor or caretaker of any place, building, or room where policy playing or the sale of what are commonly called "lottery policies" is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists, or abets in any manner, in any of the offences, acts or matters herein named, is a common gambler, and punishable by imprisonment for not more than two years, and in the discretion of the court, by a fine not exceeding one thousand dollars or both.

Added by ch. 190 of 1901. In effect Sept. 1, 1901.

Constitutional. People ex rel. Wilson v. Flynn, 72 App. Div. 67, aff'd 37 Misc. 67.

Admission of private paper. People v. Adams, 176 N. Y. 351, aff'd 85 App. Div. 390; Matter of Baker, 94 App. Div. 278.

§ 344b. Possessing policy slip, etc.

The possession, by any person other than a public officer, of any writing, paper, or document representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called "policy," or in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip, or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called "policy," is presumptive evidence of possession thereof knowingly and in violation of the provisions of section three hundred and forty-four-a.

Added by ch. 190 of 1901. In effect Sept. 1, 1901.

Constitutional. People ex rel. Wilson v. Flynn, 72 App. Div. 67, aff'd 37 Misc. 67.

People v. Adams, 176 N. Y. 351, aff'd 85 App. Div. 390.

§ 344c. Removing person occupying premises used for playing policy.

Any person having information of any place, building or room where policy playing or the sale of what are commonly called "lottery policies" is carried on, may serve personally upon the owner, landlord, agent, superintendent, janitor or caretaker of the premises, so used or occupied, a written notice, requiring the owner, landlord, agent, superintendent, janitor or caretaker, to make an application for the removal of the person so using or occupying the same. If the owner, landlord, agent, superintendent, janitor or caretaker, does not make such an application within five days thereafter, or, having made it, does not in good faith diligently prosecute it, the person giving the notice may make such an application, stating in his petition, the facts so entitling him to make it. Such an application has the same effect, as if the applicant was the landlord or lessor of the premises. The omission, or neglect of the owner, landlord, agent, superintendent, janitor or caretaker, to make such an application, or, having made it, the omission or neglect to in good faith diligently prosecute it, shall be presumptive evidence against the person on whom such notice shall be served of a violation of the provisions of section three hundred and forty-four-a. And in case the person giving said notice shall make an application as hereinbefore provided, and a final order shall be made as specified in section twenty-two hundred and forty-nine of the code of civil procedure, such order shall be evidence of a violation of the provisions of section three hundred and forty-four-a by the occupant of said premises and by the person on whom the notice herein provided for shall have been served. For the purpose of such applications, summary proceedings to recover possession of the premises so used or occupied may be maintained under the provisions of chapter seventeen, title two, of the code of civil procedure.

Added by ch. 190 of 1901. In effect Sept. 1, 1901.

135b

§ 345. Seizure of gambling implements authorized.

A person, who is required or authorized to arrest any person for a violation of the provisions of this chapter, is also authorized and required to seize any table, cards, dice or other apparatus or article, suitable for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person arrested is required to be taken.

Willis v. Warren, 17 How. Pr. 100; 1 Hilt. 590; People v. Todd, 51 Hun, 450; 4 N. Y. Supp. 27; 21 N. Y. St. Rep. 402; 6 N. Y. Cr. Rep. 222.
See 21 Alb. L. J. 72.

§ 346. Such implements to be destroyed or delivered to district attorney.

The magistrate, to whom any thing suitable for gambling purposes is delivered pursuant to the last section, must, upon the examination of the defendant, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the defendant in violation of the provisions of this chapter; and if he finds that it is of a character suitable for gambling purposes, and that it has been used by the defendant in violation of this chapter, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice may, in his opinion, require.

Willis v. Warren, 17 How. Pr. 100; 1 Hilt. 590; People v. Todd, 51 Hun, 450; 4 N. Y. Supp. 27; 21 N. Y. St. Rep. 402; 6 N. Y. Cr. Rep. 222;
Lowry v. Rainwater, 21 Alb. L. J. 72.

§ 347. Such implements to be destroyed upon conviction.

Upon the conviction of the defendant, the district attorney must cause to be destroyed every thing suitable for gambling purposes, in respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney.

See cases cited under § 345.

§ 348. Persuading another person to visit gambling places.

A person who persuades another to visit any building or part of a building, or any vessel or float, occupied or used for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to such other person in an

amount equal to any money or property there lost by him at play, to be recovered in a civil action.

Am'd by ch. 268 of 1892.

People v. Todd, 51 Hun, 450; 21 N. Y. St. Rep. 402; 4 N. Y. Supp. 27; 6 N. Y. Cr. Rep. 222.

§ 349. Certain officers directed to prosecute offenses under this chapter.

It is the duty of all sheriffs, constables, police officers, and prosecuting or district attorneys to inform against, and prosecute, all persons whom they have reason to believe offenders against the provisions of this chapter; and any omission so to do is punishable by a fine not exceeding five hundred dollars.

People v. Todd, 51 Hun. 450; 21 N. Y. St. Rep. 402; 4 N. Y. Supp. 27; 6 N. Y. Cr. Rep. 222.

§ 350. Duty of masters to suppress gambling on board their vessels.

If the commander, owner or hirer of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, or if he does not, upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars; and in addition thereto is liable to any party losing money or property by means of gambling in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

People v. Todd, 51 Hun, 450; 21 N. Y. St. Rep. 402; 4 N. Y. Supp. 27; 6 N. Y. Cr. Rep. 222.

§ 351. Pool-selling, book-making, bets and wagers, etc.

Any person who engages in pool-selling, or book-making at any time or place; or any person who keeps or occupies any room, shed, tenement, tent, booth, or building, float or vessel, or any part thereof, or who occupies any place, or stand of any kind, upon any public or private grounds, within this state, with books, papers, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, and any person who records or registers bets or wagers, or sells pools upon the result of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election; or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or any person who receives, registers, records or forwards, or purports or pretends to receive, register, record or forward, in any manner whatsoever, any money, thing or consideration of value, bet or wagered, or offered for the purpose of being bet or wagered, by or for any other person, or sells pools, upon any such result; or any person who, being the owner, lessee, or occupant of any room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or of any grounds within this state, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of

recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depository for gain, hire or reward, of any money, property or thing of value, staked, wagered or pledged, or to be wagered or pledged upon any such result; or any person who aids, assists or abets in any manner in any of the said acts, which are hereby forbidden, is guilty of a felony, except when another penalty is provided by law, and upon conviction is punishable by imprisonment in the state prison for a period not more than two years, or by a fine not exceeding two thousand dollars. When an exclusive penalty is provided by law for an act hereby prohibited, the permitting of the use of premises for the doing of the act in such case shall not be deemed a violation hereof, or of section three hundred and forty-three of this Code.

Am'd by ch. 572 of 1895 and ch. 636 of 1901.

Constitutional. People ex rel. Clifton v. De Braga, 73 App. Div. 579; People v. Stedecker, 75 App. 449, rev'd 175 N. Y. 57.

People v. Fisher, 17 N. Y. Supp. 162; Irving v. Britton, 8 Misc. 201; People v. Warden, 7 App. Div. 608; People v. Van de Carr, 150 N. Y. 441, 442; King v. Brewer, 31 Abb. N. C. 333; 8 Misc. 588; Corrigan v. Coney I. J. Club, 40 N. Y. St. Rep. 144; 27 Abb. N. C. 300; 15 N. Y. Supp. 706; Brennen v. Brighton B. R. Assn., 56 Hun, 190; 30 N. Y. St. Rep. 407; 24 Abb. N. C. 309; 7 N. Y. Supp. 221; Lawton v. Stanley, 15 N. Y. Supp. 708; Murphy v. Board of Police, 11 Abb. N. C. 337; People v. Bauer, 37 Hun, 407; 3 N. Y. Cr. Rep. 433; Jerome Park v. Board of Police, 11 Abb. N. C. 342; People ex rel. Ottolenghi v. Barbour, 5 N. Y. Cr. Rep. 381; People v. Kelly, 3 N. Y. Cr. Rep. 272; 22 Week. Dig. 64; Grannan v. Westchester R. Assn., 16 App. Div. 20; People v. Clary, 13 Misc. 547; People ex rel. Sturgis v. Fallon, 152 N. Y. 1; 4 App. Div. 77; Gibbons v. Governeur, 1 Den. 170; Buckman v. Pitcher, 1 N. Y. 392; Harris v. White, 81 N. Y. 532; People v. Todd, 51 Hun, 450; 21 N. Y. St. Rep. 402; 4 N. Y. Supp. 27; 6 N. Y. Cr. Rep. 222; De Lacy v. Adams, 52 N. Y. St. Rep. 509; 23 N. Y. Supp. 298; People v. Shannon, 87 App. Div. 82.

Pool room. People v. Levoy, 72 App. Div. 55; People v. Canepi, 181 N. Y. 398, rev'g 93 App. Div. 398.

Defective commitment. People ex rel. Allen v. Hagen, 170 N. Y. 46, rev'g 63 App. Div. 615.

Defective indictment. People v. Stedecker, 175 N. Y. 57, rev'g 75 App. Div. 449.

Indictment. People v. Cobalis, 86 App. Div. 531, rev'd 178 N. Y. 516.

Evidence. People v. McCue, 87 App. Div. 72; People v. Ebel, 96 App. Div. 270.

§ 352. Racing of animals for stake.

All racing or trial of speed between horses or other animals for any bet, stake or reward, except such as is allowed by special laws, is a public nuisance; and every person acting or aiding therein, or making or being interested in any such bet, stake or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits to the people of this state, all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof.

See § 275, subd. 3, ante.

People v. Barbour, 5 N. Y. Cr. Rep. 384; Irving v. Britton, 8 Misc. 201;

People v. Martin, 152 N. Y. 316; Buckman v. Bryan, 1 Den. 340;

Corrigan v. Coney I. J. Club, 40 N. Y. St. Rep. 144; 27 Abb. N. C. 300;

15 N. Y. Supp. 706; Gideon v. Dwyer, 87 Hun, 254; Buckman v. Pitcher,

1 N. Y. 392; Brennen v. Brighton B. R. Assn., 56 Hun, 190; 9 N. Y.

Supp. 221; 30 N. Y. St. Rep. 407; 24 Abb. N. C. 309; 15 N. Y. Supp.

708; Gibbons v. Governeur, 1 Den. 170; Matter of Dwyer, 14 Misc. 207;

Harris v. White, 81 N. Y. 532; People ex rel. Lawrence v. Fallon, 153

N. Y. 12; 4 App. Div. 88.

-covery of bet from stakeholder. French v. Matteson, 34 Misc. 425.

CHAPTER X.

Pawnbroke*s*.

Sec. 353. Pawnbroking without a license.

354. Refusing to exhibit stolen goods to owner.

355. Selling before time to redeem has expired and refusing to disclose particulars of sale.

§ 353. Pawnbroking without a license.

A person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at a rate of interest above that allowed by law, except by virtue of a license from a municipal corporation or other authority empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

§ 354. Refusing to exhibit stolen goods to owner.

A pawnbroker, or person carrying on the business of a pawnbroker, or a junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

§ 355. Selling before time to redeem has expired and refusing to disclose particulars of sale.

A pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, or who wilfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor. No pawnbroker shall transact any pawnbroking business or advance any moneys upon goods pawned or received except between the hours of seven o'clock A. M., and six o'clock P. M., on week days, excepting on Saturday, and then only between the hours of seven o'clock A. M., and twelve o'clock midnight, nor shall any business be transacted by pawnbrokers as such between the hours of twelve o'clock midnight on Saturday and seven o'clock A. M. on Monday, and every violation of these prohibitions is a misdemeanor.

Am'd by ch. 709 of 1898.

THE PENAL CODE.

TITLE XI.

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§ 356. Misconduct of veterinary surgeon.

A person who presents to a county clerk for registration as a practitioner of veterinary medicine or surgery any diploma or certificate fraudulently obtained or practices veterinary medicine and surgery without complying with or contrary to law, is guilty of a misdemeanor. This section shall not be construed to prohibit students from prescribing under the supervision of preceptors, or to prohibit gratuitous services in case of emergency or the services of an authorized practitioner of a neighboring state when incidentally called into requisition.

Added by ch. 692 of 1893.

People v. Nyce, 34 Hun, 290; 3 N. Y. Cr. Rep. 51; People v. N. Y. Homoeopathic Medical College & Hospital, 47 N. Y. St. Rep. 896; Wiel v. Cowles, 45 Hun, 308; People v. Fulda, 52 Hun, 66; 23 N. Y. St. Rep. 410; 7 N. Y. Cr. Rep. 3; 4 N. Y. Supp. 942; 4 N. Y. Cr. Rep. 139.
See § 153, Public Health Law. People v. Allcutt, 117 App. Div. 546.

§ 357. Acts of intoxicated physician.

A physician or surgeon, or person practicing as such, who, being in a state of intoxication, administers any poison, drug or medicine, or does any other act, as a physician or surgeon, to another person, by which the life of the latter is endangered, or his health seriously affected, is guilty of a misdemeanor.

See § 200, ante.

§ 358. Willfully poisoning food, etc.

A person who willfully mingles poison with any food, drink or medicine, intended or prepared for the use of human beings, and a person who willfully poisons any spring, well or reservoir of water, is punishable by imprisonment in a state prison not exceeding ten years, or in a county jail, not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

See §§ 217, subd. 2, 218, subd. 1, ante.

People v. Townsend et al., 3 Hill, 479; Meeker v. Van Rensselaer, 15 Wend. 397.

§ 359. Overloading passenger vessel.

A person navigating a vessel for gain, who willfully or negligently receives so many passengers, or such a quantity of other lading on board the vessel, that by means thereof it sinks or is overset or injured, and thereby the life of a human being is endangered, is guilty of a misdemeanor.

See § 197, ante.

§ 359a. Offenses against navigation law.

Any person having the charge, command or control of a steam-boat or vessel who,

1. Permits a line used for the purpose of landing or receiving passengers, to be attached in any way to the machinery of any steamboat, or permits a small boat used for the purpose of landing or receiving passengers to be hauled by means of such machinery; or,

2. Carries or permits a steamboat to carry a greater number of passengers than is stated in the certificate of such steamboat issued under the navigation law; or,

3. Willfully violates any of the provisions of section eleven of the navigation law, relating to the sailing rules; or,

4. Neglects to carry and show on a vessel the lights required by section twelve of the navigation law; or,

5. Neglects to carry on a vessel the life boats and life preservers required by sections fourteen and fifteen of the navigation law; or,

6. Neglects to carry on a vessel the steam fire pump required by section thirteen of the navigation law; or,

7. Intentionally loads or obstructs or causes to be loaded or obstructed in any way the safety valve of the boiler of any steam-boat or naphtha launch, or employs any other means or device whereby the boiler of such vessel may be subjected to a greater pressure than is allowed by the inspectors' certificate, or intentionally deranges or hinders the operation of any machinery or device employed to denote the stage of the water or steam in any boiler or to give warning of approaching danger, or intentionally permits the water to fall below the prescribed low water limit of the boiler; or,

8. Acts or permits another person to act as officer of a vessel without having the license required by section seventeen of the navigation law, except as permitted by the provisions of section thirty of the navigation law; or,

9. Uses or permits to be used in lamps, lanterns or other lights, on a vessel, any oil, which will not stand a fire test of at least three hundred degrees Fahrenheit; or,

10. After employing a steam vessel for towing, receives any commission or compensation for orders given to the owner, captain or agent of any vessel for towage; or interferes with or hinders any such owner, captain or agent, while in the prosecution of his business; or,

11. Neglects to cause the dampers in the pipes or chimneys of a steamboat to be closed, or to otherwise prevent the escape of

sparks and coals therefrom while passing near any of the villages or cities situated on the Hudson river, or while landing or receiving passengers or freight, or while lying at the docks or wharves thereof,

Is guilty of a misdemeanor.

Added by ch. 584 of 1897.

§ 359b. Id.; punishment.

A person who violates any other provision of the navigation law for which no other punishment is prescribed, is guilty of a misdemeanor.

Added by ch. 584 of 1897.

§ 360. Unauthorized pressure of steam.

A person who applies, or causes to be applied, to a steam boiler a higher pressure of steam than is allowed by law, or by the inspector, officer or person authorized to limit the pressure of steam to be applied to such boiler, is guilty of a misdemeanor.

See § 198, ante.

Landers v. Staten Island R. Co., 53 N. Y. 450; 14 Abb. (N. S.) 346, rev'd 18 Abb. (N. S.) 388; *People v. Jenkins*, 1 Hill, 467.

§ 361. Generation of unsafe amount of steam.

A captain or other person having charge of the machinery or boiler of a steamboat used for the conveyance of passengers, in the waters of this state, who from ignorance or gross neglect, or for the purpose of increasing the speed of the boat, creates, or causes to be created, an undue and unsafe pressure of steam, is guilty of a misdemeanor.

See § 198, ante, and cases cited under § 360.

§ 362. Mismanagement of steam boilers.

An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who, willfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

See § 198, ante.

§ 363. Fictitious copartnership names.

A person who transacts business, using the name, as partner, of one not interested with him as partner, or using the designation "and company," or "& Co." when no actual partner or partners are represented thereby, is guilty of a misdemeanor. But this section does not apply to any case, where it is specially pre-

scribed by statute that a partnership name may be continued in use by a successor, survivor, or other person.

Matter of Randell, 8 N. Y. Supp. 655; Kennedy v. Budd, 5 App. Div. 142; Wood v. Erie Ry. Co., 72 N. Y. 196; O'Toole v. Garvin, 1 Hun, 93; Cohn v. Gottschalk, 16 N. Y. St. Rep. 824; Barron v. Yost, 35 N. Y. St. Rep. 380; 12 N. Y. Supp. 455; Donlon v. English, 89 Hun, 68; Swords v. Owen, 43 How. Pr. 184; Rosenheim v. Rosenfield, 37 N. Y. St. Rep. 552; 13 N. Y. Supp. 721; Gay v. Seibold, 97 N. Y. 472; Loeb v. Ins. Co., 38 Misc. 107; Vandergrift v. Bertron, 83 App. Div. 548; Matter of Kaffenburgh, 115 App. Div. 346. Contract enforcement. McArdle v. Thomas Iron Works, 95 App. Div. 139.

§ 363a. Carrying on business as agent.

1. Any person now carrying on or conducting a general mercantile or manufacturing business within this state, or hereafter commencing such business at or in a fixed location as agent or manager for another or others, shall within thirty days after the passage of this act, or the commencement of such business, file a sworn statement, verified by such agent and principal or principals, in the county clerk's office of the county within which said business is carried on, stating the nature of the business and the full name and residence of such principal or principals.

2. Any person or persons, principal or principals may be relieved from all liability for the future act of such agent or manager by filing in the office of the county clerk where the original statement appointing such agent or manager is filed a statement revoking such agent or managership, to take effect ten days after the filing thereof; provided he shall, at or before the date of such filing serve either personally or by mail, in the manner prescribed by the Code of Civil Procedure for service of papers in civil actions, a copy of such revocation statement on each person or firm with whom such principal shall have transacted any business through such agent or manager within six months previous to such filing. But failure to make service of such statement shall not invalidate such revocation except as to persons not so served, said statement to be acknowledged before an officer authorized to take acknowledgments of deeds, and to be published in at least three consecutive issues of the newspaper published in the county and nearest to the place where the business of said agent or manager is carried on; but if no newspaper is published in said county, then said statement shall be published in the newspaper published nearest to the place where such business shall be carried on.

3. The county clerk shall keep a register of the names of such agent in alphabetical order, and of their principals, for which registering and filing he shall receive a fee of one dollar; and copies of such certificate and registry certified by him and the affidavit of such publication shall be evidence.

4. Any person or persons failing to make and file the statement required by the first paragraph of this act, as herein required, shall be guilty of a misdemeanor.

Subd. 4 added by ch. 709 of 1893; subd. 2 am'd by ch. 890 of 1895.

O'Toole v. Garvin, 1 Hun, 92; Swords v. Owens, 43 How. 176; Cohn v. Gottschalk, 16 N. Y. St. Rep. 818; Wood v. E. Ry. Co., 72 N. Y. 196; Barron v. Yost, 35 N. Y. St. Rep. 380; Rosenheim v. Rosenfield, 37 N. Y. St. Rep. 551; 13 N. Y. Supp. 721.

Unlawful use of " & Co." Sinnott v. German-Am. Bank, 164 N. Y. 396, aff'g 33 App. Div. 641.

§ 363b. Carrying on business under an assumed name.

1. No person or persons shall hereafter carry on or conduct or transact business in this state under any assumed name or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business, unless such person or persons shall file in the office of the clerk of the county or counties in which such person or persons conduct, or transact, or intend to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting, or intending to conduct said business.

2. Persons now conducting such business under an assumed name, or under any such designation referred to in subdivision one, shall file such certificate as hereinbefore prescribed, within thirty days after this act shall take effect, and persons hereafter conducting or transacting business as aforesaid shall, before commencing said business, file such certificate in the manner hereinbefore prescribed.

3. The several county clerks of this state shall keep an alphabetical index of all persons filing certificates, provided for herein and for the indexing and filing of such certificates they shall receive a fee of twenty-five cents. A copy of such certificate duly certified to by the county clerk in whose office the same shall be filed shall be presumptive evidence in all courts of law in this state of the facts therein contained.

4. This act shall in no way affect or apply to any corporation duly organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in this state, nor shall this act be deemed or construed to prevent the lawful use of a partnership, name or designation, provided that such partnership name or designation shall include the true or real name of at least one of such persons transacting such business.

5. Any person or persons carrying on, conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this act, shall be guilty of a misdemeanor.

Added by ch. 216 of 1900.

Recovery in civil action. Doyle v. Shuttleworth, 41 Misc. 42.

Related to assumed names. Castle Bros. v. Graham, 87 App. Div. 97.

Loeb v. Ins. Co., 38 Misc. 107.

§ 364. Offenses against trade-marks.

A person who knowingly, in a case where provision for the punishment for the offense is not otherwise specially made by statute:

1. Falsely makes or counterfeits a trade-mark; or
2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or
3. Sells, or keeps or offers for sale, an article of merchandise to which is affixed a false or counterfeit trade-mark, or the genuine

trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or

4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand, or other thing for the purpose of falsely making or counterfeiting a trade-mark; or,

5. Makes or sells or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, an article of merchandise with such a trade-mark as to appear to indicate the quantity, quality, character, place of manufacture or production, or persons manufacturing or producing the article, but not indicating it truly; or

6. Who knowingly sells, offers or exposes for sale, any goods which are represented in any manner, by word or deed, to be the manufacture or product of any person, firm or corporation, other than himself, unless such goods are contained in the original packages and under the labels, marks or names placed thereon by the manufacturer who is entitled to use such marks, names, brands or trade-marks; or,

7. Who shall sell or shall expose for sale any goods in bulk, to which no label or trade-mark shall be attached, and shall by representation, name or mark written or printed thereon, represent that such goods are the production or manufacture of a person who is not the manufacturer; is guilty of a misdemeanor.

8. Any person, firm, corporation or association, or any employee thereof, who, in a newspaper, circular or other publication published in this state, knowingly makes or disseminates any statement or assertion of fact concerning the quantity, the quality, the value, the method of production or manufacture, or the reason for the price of his or their merchandise, or the manner or source of purchase of such merchandise, or the possession of rewards, prizes or distinctions conferred on account of such merchandise or the motive or purpose of a sale, intended to give the appearance of an offer advantageous to the purchaser which is untrue or calculated to mislead, shall be guilty of a misdemeanor.

§ 2. Any person, firm, corporation or association or any employee thereof who violates any provision of this act shall be liable to a fine of not less than twenty-five nor more than one hundred dollars for each offense.

Am'd by ch. 384 of 1882; ch. 45 of 1889 and ch. 423 of 1904.

See § 56, Code Crim. Pro.

Low v. Hall, 47 N. Y. 104; *People v. Fisher*, 50 Hun, 552; 20 N. Y. St. Rep. 538; 3 N. Y. Supp. 787; *People v. Molins*, 7 N. Y. Cr. Rep. 51;

Richard v. Boland, 5 Misc. 553; *People v. Strauss*, 94 App. Div. 468. Misdemeanor. *People v. Krivitzky*, 168 N. Y. 182, aff'g 60 App. Div. 307. Conviction, accomplice. *People v. Hiltzman*, 61 App. Div. 541.

§ 364a. Offenses against selling merchandise, etc., marked "sterling" or "sterling silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver, or solid silver, unless nine hundred and twenty-five one-thousandths

of the component parts of the metel of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

Added by ch. 474 of 1894; am'd by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

People v. Webster, 17 Misc. 410.

§ 364b. Offenses against selling merchandise, etc., marked "coin" or "coin silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise, marked, stamped or branded with the words "coin" or "coin silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is coin or coin silver, unless nine hundred one-thousandths part* of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

Added by ch. 474 of 1894; am'd by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

§ 364c. Selling merchandise composed of two or more parts, soldered together marked "sterling" or "sterling silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped or branded with the words "sterling" or "sterling silver," unless all of said component parts shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

Added by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

§ 364d. Selling merchandise composed of two or more parts, soldered together marked "coin" or "coin silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped or branded with the words "coin" or "coin silver," unless all of said component parts shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

Added by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

§ 364e. Unlawfully selling merchandise with metal attachment marked "sterling" or "sterling silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words

* So in original.

"sterling" or "sterling silver," unless said applied or attached metal mounting shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

Added by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

§ 364f. Unlawfully selling merchandise with metal attachment marked "coin" or "coin silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless said applied or attached metal mounting shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

Added by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

People v. Hoffheimer, 110 App. Div. 423.

§ 364g. Unlawfully selling merchandise with covering marked "sterling" or "sterling silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "sterling" or "sterling silver," unless said case or covering shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

Added by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

§ 364h. Unlawfully selling merchandise with covering marked "coin" or "coin silver."

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "coin" or "coin silver," unless said case or covering shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

Added by ch. 330 of 1898.

See ch. 331 of 1898 as am'd by ch. 288 of 1905.

§ 364i. Unlawfully marking linen.

Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his, her, or its pos-

session with intent to sell or dispose of, any collars or cuffs marked, stamped, or branded with the words "linen," "pure linen" or "all linen" or incased or enclosed in any box, package, cover or wrapper or other thing in, by or with which the said article is packed, enclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark, or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is "linen," "pure linen," or "all linen," unless the material of which the said collars or cuffs are manufactured contains at least one fold or ply which has a flax thread in both its warp and filing, is guilty of a misdemeanor.

Added by ch. 586 of 1900. In effect Oct. 1, 1900.

§ 364j. Unlawfully stamping, etc., articles of gold.

Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise, constructed in whole or in part of gold or of any alloy of gold and having stamped, branded, engraved or imprinted thereon any mark indicating or designed or intended to indicate that the gold or alloy of gold in such article is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy, is guilty of a misdemeanor.

Added by ch. 287 of 1905.

§ 365. "Article of merchandise" defined.

The expression "article of merchandise," as used in this title, signifies any goods, wares, work of art, commodity, compound, mixture, or other preparation or thing, which may be lawfully kept or offered for sale.

Am'd by ch. 384 of 1882.

§ 366. "Trade-mark" defined.

A "trade-mark" is a mark used to indicate the maker, owner or seller of an article of merchandise, and includes, among other things, any name of a person, or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label, or other mark, lawfully adopted by him, and usually affixed to an article of merchandise, to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed, or otherwise prepared by him; and also a signature or mark, used or commonly placed, by a painter, sculptor, or other artist, upon a painting, drawing, engraving, statue, or other work of art, to indicate that the same was designed or executed by him.

Am'd by ch. 384 of 1882.

Wolfe v. Burke, 56 N. Y. 115, rev'd 7 Lans. 151; Stokes v. Landgraff, 15 Barb. 608; Bininger v. Wattles, 28 How. 206; Wolfe v. Goulard, 18 How. 64; Town v. Stetson, 3 Daly, 53; 5 Abb. Pr. 218; Caswell v. Davis, 58 N. Y. 223; 4 Abb. (N. S.) 6; 35 How. Pr. 76; Faber v. Faber, 49 Barb. 357; 3 Abb. (N. S.) 115; Meserole v. Tynberg, 36 How. 141; 4 Abb. (N. S.) 410; Rellett v. Carlier, 61 Barb. 436; 11 Abb. (N. S.) 186; Newman v. Alvord, 51 N. Y. 189; 49 Barb. 588; 35 How. 108; Gillott v. Esterbrook, 48 N. Y. 374; Hier v. Abrahams, 82 N. Y. 519; Phelan v. Collender, 8 Hun, 244; Helmbold v. Helmbold Mfg. Co., 53 How. 453; Booth v. Jarrett, 52 How. 169; Mcneely v. Mcneely, 62 N. Y. 427; Ward & Co. v. Ward, 40 N. Y. St. Rep. 792; Wagner v. Daly, 50 N. Y. St. Rep. 841; 22 N. Y. Supp. 495; Congress Spring Co. v. High Rock Spring Co., 45 N. Y. 291; People v. Fisher, 50 Hun, 553; 20 N. Y. St. Rep. 588; 3 N. Y. Supp. 787; Taylor v. Gillies, 59 N. Y. 331; Cook v. Starkweather, 13 Abb. N. C. 392; Smith v. Sixbury, 25 Hun, 232; People v. Krivitzky, 168 N. Y. 182, aff'd 60 App. Div. 307.

§ 367. "Affixing" defined.

A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon either

1. The article itself; or

2. A box, bale, barrel, bottle, case, cask, platter or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing, in, by, or with which the goods are packed, inclosed, or otherwise prepared for sale or disposition.

Am'd by ch. 384 of 1882 and ch. 494 of 1904.

§ 368. Trade-marks deemed "counterfeited."

An imitation of a "trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the use of words or letters, similar in appearance or in sound, or by any sign, device or other means whatsoever.

Electro Silicon Co. v. Levy, 59 How. Pr. 469; Coleman v. Crump, 70 N. Y. 573; People v. Fisher, 50 Hun, 554; 20 N. Y. St. Rep. 538; 3 N. Y. Supp. 787; Clark v. Clark, 25 Barb. 76; Popham v. Cole, 66 N. Y. 69; 14 Abb. (N. S.) 206; Merrimack Mfg. Co. v. Garner, 2 Abb. 318; Brooklyn White Lead Co. v. Masury, 25 Barb. 416; Wagner v. Daly, 50 N. Y. St. Rep. 843; 22 N. Y. Supp. 496.

§ 369. Refilling or selling stamped mineral water bottles, platters, etc.

Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water, or other beverage, or in making, selling or disposing of articles of pastry, may register his title as owner of a trade-mark by filing with the secretary of state and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the state; but no trade-mark shall be filed which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration the use without the consent of the owner of the trade-mark, so described, or the filing of any bottle, siphon, barrel, platter, vessel or thing for the purpose of sale, or for the sale therein, of any article of the same general nature and quality which said bottle, siphon, barrel, platter, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, platter, vessel or other thing so as to prevent its wrongful use, shall be deemed a misdemeanor.

Am'd by ch. 384 of 1882; ch. 513 of 1885, and ch. 494 of 1904.

See cases cited under §§ 366, 368.

Mullens v. People, 24 N. Y. 399; 23 How. Pr. 289; People v. Cannon, 43 N. Y. St. Rep. 427; People v. Elfenbein, 48 N. Y. St. Rep. 87; People v. Quinn, 44 N. Y. St. Rep. 920.

§ 370. Keeping such bottles, platters, et cetera with intent to refill or sell them.

Any person engaged in the business of buying and selling bottles, siphons, barrels, platters or other vessels or things, who shall, with intent to defraud the registered owner of a trade-mark, knowingly sell or offer for sale any bottle, siphon, barrel, platter, vessel or other thing to any person, who he has reason to believe wrongfully intends to use the trade-mark upon it, or to fill such bottle, siphon, barrel, platter, vessel or other thing in violation of section three hundred and sixty-nine, shall be deemed guilty of a misdemeanor.

Am'd by ch. 494 of 1904.

Mullens v. People, 24 N. Y. 399; 23 How. 289.

§ 371. Search for bottles, platters, et cetera.

Whenever a registered owner of a trade-mark, or his agent, makes oath before a magistrate that he has reason to believe and does believe, stating the grounds of his belief, that a bottle, siphon, barrel, platter, vessel or other thing to which is affixed a trade-mark belonging to him is being used or filled, or has been sold or offered for sale, by any person whomsoever, in violation of the preceding section, then the magistrate may issue a search warrant to discover the thing and cause the person having it in possession to be brought before him and may thereupon inquire into the circumstances, and if on examination he finds that such person has been guilty of the offense charged, he may hold the offender to bail to await the action of the grand jury, and the offender shall also be liable to an action on the case for damages for such wrongful use of such trade-mark at the suit of the owner thereof, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use.

Am'd by ch. 384 of 1882, and ch. 494 of 1904.

People ex rel. Fellows v. Hogan, 123 N. Y. 219; 33 N. Y. St. Rep. 48, aff'd 55 Hun, 391; 7 N. Y. Cr. Rep. 476; 29 N. Y. St. Rep. 110; 8 N. Y. Supp. 451; Mullens v. People, 24 N. Y. 399; 23 How. 289.

§ 372. Defacing marks upon wrecked property.

A person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership thereof, is guilty of a misdemeanor.

Baker v. Hoag, 7 N. Y. 555.

§ 373. Floating logs or defacing marks thereon.

A person who:

1. Floats, runs or assists in floating or running any lumber, logs or other timber upon or over any river not excepted by law, within this state, recognized by law or use as a public highway for the purpose of floating and running lumber, logs and other

timber therein, without first filing the bond executed and approved as required by law; or

2. Unlawfully cuts out, alters or defaces any mark made upon any log or lumber, whether such mark be recorded or not, or puts a false mark upon any log or lumber floating in any of the waters of this state or lying upon land; is guilty of a misdemeanor.

Am'd by ch. 692 of 1898.

§ 374. Officer unlawfully detaining wrecked property.

An officer, whose duties pertain in any way to wrecked property, who, without authority of law, detains such property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of such duties, is guilty of a misdemeanor.

§ 375. Fraud in affairs of limited partnership.

A member of a limited partnership, who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

§ 376. Solemnizing unlawful marriages.

A minister or magistrate who solemnizes a marriage when either of the parties is known to him to be under the age of legal consent, or to be an idiot or insane person, or a marriage to which within his knowledge a legal impediment exists, is guilty of a misdemeanor. Until a marriage has been dissolved or annulled by a proper tribunal or court of competent jurisdiction, any person who shall assume to grant a divorce, in writing, purporting to divorce husband and wife and permitting them or either of them to lawfully marry again, shall be guilty of a misdemeanor punishable by fine for the first offense not exceeding five hundred dollars, and for the second offense one thousand dollars, or imprisonment not exceeding one year, or both such fine and imprisonment.

Am'd by ch. 461 of 1898.

See § 301, ante.

Ch. 24 of 1877, ch. 415 of 1889.

Hayes v. People, 25 N. Y. 890; In re Hampe, 2 City Ct. 401; Leshinsky v. Leshinsky, 5 Misc. 497.

§ 377. Unlawful confinement of idiots, insane persons, etc.

A person, who confines an idiot, lunatic or insane person, in any other manner or in any other place than as authorized by law, and a person guilty of harsh, cruel or unkind treatment of, or any neglect of duty towards any idiot, lunatic or insane person under confinement, whether lawfully or unlawfully confined, is guilty of a misdemeanor.

See § 228, subd. 6, ante.

§ 378. Taking security for usurious loans.

A person who takes security upon any household furniture, sewing machines, plate or silverware, in actual use, tools or implements

of trade, wearing apparel or jewelry, for a loan or forbearance of money or for the use or sale of his personal credit, conditioned upon the payment of a greater rate than six per centum per annum, or who as security for such loan, use or sale of personal credit as aforesaid, makes a pretended purchase of such property from any person upon the like condition, and permits the pledger to retain the possession thereof, is guilty of a misdemeanor.

Am'd by ch. 72 of 1895, and ch. 661 of 1904.

People v. Hubbard, 10 Misc. 106; People v. Wheeler, 47 Hun, 486.

§ 379. Reconfining persons discharged upon writ.

A person, who either solely, or as a member of a court, or in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of habeas corpus, or certiorari, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or by imprisonment not exceeding six months, or both; and in addition to the punishment prescribed therefor, he forfeits to the party aggrieved, one thousand two hundred and fifty dollars to be recovered in a civil action.

See § 2050, Code Civ. Pro.

Yates' case, 4 Johns. 318; 6 Johns. 337; Matter of Felten, 16 How. 308.

§ 379a. Return of photograph, etc., of person acquitted.

Upon the determination of a criminal action or proceeding against a person, in favor of such person, every photograph of such person and photographic plate or proof taken or made of such person while such action or proceeding is pending by direction or authority of any police officer, peace officer or any member of any police department, and all duplicates and copies thereof shall be returned on demand to such person by the police officer, peace officer or member of any police department having any such photograph, photographic plate or proof, copy or duplicate in his possession or under his control; and such police officer, peace officer or member of any police department failing to comply with the requirements hereof, shall be guilty of a misdemeanor.

Added by ch. 626 of 1907.

§ 380. Concealing persons entitled to writ of deliverance.

A person having in his custody or power or under his restraint, one who would be entitled to a writ of habeas corpus or certiorari, or for whose relief a writ of habeas corpus or certiorari has been issued, who, with intent to elude the service of such writ, or to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who without lawful excuse refuses to produce him, is guilty of a misdemeanor, punishable as prescribed in the last section.

Rising v. Dodge, 2 Duer, 42.

§ 381. Innkeepers and carriers refusing to receive guests and passengers.

A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common

carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

See § 383, post.

§ 382. Frauds on hotel-keepers.

A person who obtains any lodging, food or accommodation at a hotel, inn, boarding-house or lodging-house, except an emigrant lodging-house, without paying therefor, with intent to defraud the proprietor thereof or his agent or servant; or who obtains credit at such hotel, inn, boarding-house or lodging-house, by the use of any false pretense; or who, after obtaining credit or accommodation at such hotel, inn, boarding-house or lodging-house, causes to be removed from such hotel, inn, boarding-house or lodging-house his baggage without the permission or consent of the proprietor, manager or authorized employee thereof before paying for his lodging, food or accommodation, and with the intention of not paying therefor, is guilty of a misdemeanor. Proof of the dishonor because of insufficient funds in the hands of the drawee of any check, draft or instrument for the payment of money only which shall have been delivered to the proprietor, manager or employee of such hotel, inn, boarding-house or lodging-house by the person who obtains such lodging, food or accommodation, or by his agent or employee, to pay in whole or in part for such lodging, food or accommodation, shall be presumptive evidence of the intent of such person to defraud as herein provided; a certificate in writing of any notary public to the effect that such check, draft or instrument for the payment of money only has been duly presented for payment where payable, and that payment thereof has been refused because of insufficient funds in the hands of the drawee, shall be *prima facie* evidence of such non-payment.

Am'd by ch. 645 of 1886, ch. 883 of 1895 and ch. 682 of 1907.
See § 56, subd. 33, Code Crim. Pro.

§ 383. Protecting civil and public rights.

A person who:

1. Excludes a citizen of this state, by reason of race, color or previous condition of servitude, from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of common schools and public institutions of learning, or by cemetery associations; or

2. Denies or aids or incites another to deny to any other person because of race, creed or color, full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement,

Is guilty of a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars.

Am'd by ch. 692 of 1893.

See § 381, ante.

See U. S. Constitution, Thirteenth and Fourteenth Amendments.

People v. King, 110 N. Y. 418; 18 N. Y. St. Rep. 353, aff'g 42 Hun, 187; 5 N. Y. St. Rep. 138; People v. Warden of Prison, 157 N. Y. 148; People v. Rosenberg, 67 Hun, 60; 51 N. Y. St. Rep. 189; 22 N. Y. Supp. 61; Carpenter v. Fisher, 18 App. Div. 562; Rapps v. Gottlieb, 51 N. Y. St. Rep. 195.

§ 383a. Bicycle race; time of riding during, limited.

In a bicycle race, or other contest of skill, speed or endurance, wherein one or more persons shall be a contestant or contestants,

it shall be unlawful for any contestant to continue in such race or contest for a longer time than twelve hours during any twenty-four hours. The proprietor, occupant or lessee of the place where such race or contest takes place, consenting to, allowing or permitting any violation of the foregoing provisions of this section is guilty of a misdemeanor. The manager or superintendent of such race or contest consenting to, permitting or allowing any violation of the provisions of the first sentence of this section is guilty of a misdemeanor.

Added by ch. 316 of 1899.

§ 383a. Discrimination, when prohibited.

If a person who owns, occupies, manages or controls a building, park, enclosure or other place, opens the same to the public generally at stated periods or otherwise, he shall not discriminate against any person or class of persons in the price charged for admission thereto. A person violating the provisions of this section is guilty of a misdemeanor.

Added by ch. 724 of 1899.

§ 384. Acrobatic exhibitions.

The proprietor, occupant or lessee of any place where acrobatic exhibitions are held, who permits any person to perform on any trapeze, rope, pole or other acrobatic contrivance, without network or other sufficient means of protection from falling or other accident, and any person who makes or attempts to make an ascension by means of a balloon, with a trapeze or parachute attachment, or any other device for the purpose of making a descent from such balloon, is guilty of a misdemeanor punishable for the first offense by a fine of two hundred and fifty dollars, and for each subsequent offense by a fine of two hundred and fifty dollars and imprisonment not less than three months nor more than one year.

Am'd by ch. 268 of 1892.

§ 384a. Contracts in relation to Indian lands.

A person who without the authority and consent of the legislature, in any manner or for on any terms, purchases any lands within this state of any Indian residing therein, or makes any contract with any Indian for or concerning the sale of any lands within this state, or gives, sells, demises, conveys or otherwise disposes of any such lands, or any interest therein, or offers so to do, or enters upon or takes possession of or settles upon any such lands, by pretext or color of any right or interest in the same, in consequence of any such purchase, or contract made or to be made, since October fourteenth, seventeen hundred and seventy-five, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 384b. Unlawful dealing in convict-made goods.

A person who

1. Sells or exposes for sale convict-made goods, wares or merchandise, without a license therefor, or having such license does not transmit to the secretary of state the statement required by article four of the labor law; or,

2. Sells, offers for sale, or has in his possession for sale any such convict-made goods, wares or merchandise without the brand, mark or label required by article four of the labor law; or,

3. Removes or defaces or in any way alters such brand, mark or label, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than one thousand nor

less than one hundred dollars, or by imprisonment for not less than ten days or by both such fine and imprisonment.

Added by ch. 692 of 1893; am'd by ch. 931 of 1896, and ch. 416 of 1897.
Declared repugnant to commerce clause of the federal constitution. People v. Hawkins, 157 N. Y. 5, aff'g 20 App. Div. 494.
Chapter 698 of 1894, unconstitutional. People v. Hawkins, 85 Hun, 43.

§ 384c. Elevator charges.

A person who charges for elevating, receiving or discharging grain by means of floating or stationary elevators a greater sum than is allowed by law is guilty of a misdemeanor.

Added by ch. 551 of 1896.

§ 384d. Violation of domestic commerce law.

A person who violates any provision of section thirty-nine of the domestic commerce law is guilty of a misdemeanor.

Added by ch. 551 of 1896.

§ 384e. Unlicensed peddlers.

A person who is found trading as a peddler without a license, or contrary to the terms of his license, or who refuses to produce his license on demand of any officer or citizen is guilty of a misdemeanor.

Added by ch. 551 of 1896.

§ 384f. Failure to furnish statistics to commissioner of labor statistics.

Added by ch. 416 of 1907.

Repealed by ch. 506 of 1907.

§ 384g. Refusal to admit inspector to mines, tunnels, and quarries; failure to comply with requirements of inspector.

A person,

1. Refusing to admit the commissioner of labor, or any person authorized by him, to a mine, tunnel or quarry, and to each and every part thereof, for the purpose of examination and inspection, or

2. Neglecting or refusing to comply with the provisions of article nine of the labor law upon written notice of the commissioner of labor, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days.

Added by ch. 416 of 1897.

Am'd by ch. 521 of 1906.

§ 384h. Hours of labor to be required.

Any person or corporation,

1. Who, contracting wth the state or a municipal corporation, shall require more than eight hours work for a day's labor; or,

2. Who shall require more than ten hours labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employes of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or,

3. Who shall require the employes of a corporation owning or operating a brickyard to work contrary to the requirements of section six of labor law; or,

4. Who shall require or permit any employee engaged in or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length or over, in whole or in part within this state to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who

has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours of duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal; is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense. If any contractor with the state or a municipal corporation shall require more than eight hours for a day's labor, upon conviction therefor in addition to such fine, the contract shall be forfeited at the option of the municipal corporation.

Added by ch. 416 of 1897.

Am'd by chs. 506 and 523 of 1907.

Subd. 1 is unconstitutional. People v. Orange Co. Road Cons. Co., 175 N.Y. 84, rev'd 73 App. Div. 580, rev'd 37 Misc. 341.

§ 384i. Payment of wages.

A corporation or joint stock association or a person carrying on the business thereof, by lease or otherwise, who does not pay the wages of its employes in cash, weekly or monthly, as provided in article one of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined no less than twenty-five nor more than fifty dollars for each offense.

Added by ch. 416 of 1897.

§ 384j. Failure to furnish seats for female employes.

Any person employing females in a factory or mercantile establishment who does not provide and maintain suitable seats for the use of such employes and permit the use thereof by such employes to such an extent as may be reasonable for the preservation of their health, is guilty of a misdemeanor.

Added by ch. 416 of 1897.

§ 384k. No fees to be charged for services rendered by free public employment bureaus.

A person connected with or employed in a free public employment bureau, who shall charge or receive directly or indirectly, any fee or compensation from any person applying to such bureau for help or employment, is guilty of a misdemeanor.

Added by ch. 416 of 1897.

§ 384l. Violations of provisions of labor law.

Any person who violates or does not comply with:

I. The provisions of article two of the labor law, relating to the department of labor;

2. The provisions of article three of the labor law, relating to the bureau of labor statistics;

3. The provisions of article five of the labor law, relating to the bureau of factory inspection;

4. The provisions of article six of the labor law, relating to factories;

5. The provisions of article seven of the labor law, relating to the manufacture of articles in tenements;

6. The provisions of article eight of the labor law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein;

7. The provisions of article eleven of the labor law relating to mercantile establishments, and the employment of women and children therein;

8. And any person who knowingly makes a false statement in or in relation to any application made for an employment certificate as to any matter required by article six and eleven of the labor law to appear in any affidavit, record, transcript or certificate therein provided for, is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

Added by ch. 416 of 1897, and am'd by ch. 380 of 1903.

§ 384m. Illegal practice of horseshoeing.

A person who presents to a county clerk, for the purpose of registration, a certificate purporting to qualify him to practice horseshoeing in a city of the first or second class, which has been fraudulently obtained, or practices as a horseshoer in any such city without complying with the provisions of article twelve of the labor law, or violates or neglects to comply with any of such provisions, is guilty of a misdemeanor.

Added by ch. 416 of 1897.

Unconstitutional. People v. Beattie, 96 App. Div. 383.

§ 384m. Notes given for patent rights.

A person who takes, sells or transfers a promissory note or other negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part, of the right to make, use or sell any patent invention or inventions or any invention claimed or represented to be patented, without having the words "given for a patent right" written or printed legibly and prominently on the face of such note or instrument above the signature thereto, is guilty of a misdemeanor.

Added by ch. 613 of 1897.

§ 384n. Notes given for a speculative consideration.

A person who takes, sells or transfers a promissory note or other negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part of the purchase price of any farm product at a price greater by four or more times than the fair market value of the same product at the time in the locality, or in which the consideration shall be in whole or in part, membership of and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at such rate, without having the words "given for a speculative consideration," or other words clearly showing the nature of the consideration prominently and legibly written or printed on the

OF OTHER OFFENSES. §§ 384o, 384p

face of such note or instrument above the signature thereof is guilty of a misdemeanor.

Added by ch. 613 of 1897.

§ 384o. Fraudulent entries and practices in contests of speed.

Any person who

1. Knowingly enters for competition, or furnishes to another person for entry or competition, or brings into this state for entry or competition for any purse, prize, premium, stake or sweepstakes offered or established by any person, association or corporation, any running, trotting or pacing horse, mare, gelding, colt or filly under an assumed name, or out of its proper class, or that has been painted or disguised or represented to be any other or different horse, mare, gelding, colt or filly from the one which is purported to be entered where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed; or

2. Being the owner, trainer, or other person having the control of the racing qualities of any running, trotting or pacing horse, mare, gelding, colt or filly, knowingly allows the same to compete for any such prize, purse, premium, stake or sweepstakes under an assumed name, or out of its proper class, or as any other or different horse, mare, gelding, colt or filly than the one it actually is; or

3. In any competition for any such purse, prize, premium, stake or sweepstakes, knowingly drives any trotting or pacing horse, mare, gelding, colt or filly which has been entered under an assumed name, or out of its proper class or which has been painted or disguised, or represented to be any other or different horse, mare, gelding, colt or filly than the one it actually is shall be guilty of a misdemeanor, punishable by a fine of not less than five hundred nor more than fifteen hundred dollars, or by imprisonment for not more than one year, or both. The true name and age, and also the pedigree, unless such pedigree is unknown, of every such animal shall be registered with the jockey club before it shall be eligible to compete in any such race conducted under the license of the state racing commission; and such name shall continue to be its true name unless and until the same shall be changed according to the rules and regulations of such jockey club. Any person who shall knowingly cause or procure or aid in any false registration under this section shall be guilty of a misdemeanor, and upon conviction shall be punished as hereinabove provided. The class to which any such animal belongs for the purpose of the entry or competition in any other race shall be determined by the public performance thereof in former contests or trials of speed, as provided by the printed rules of the person, association or corporation under which the proposed contest is advertised to be conducted.

Added by ch. 394 of 1898.

Am'd by ch. 454 of 1906.

§ 384p. Issue of trading stamps and other devices.

A person who shall:

1. Issue trading stamps or other devices to any person engaged in any trade, business or profession, with the promise, express or implied, that he will give to the person presenting to him such

stamps or other devices, money or anything of value, without receiving from such person the value thereof, or make to any such person any concession or preference in any way, on account of the presentation of such trading stamps or other devices; or

2. Being engaged in any trade, business or profession, shall distribute or present to any person dealing with him, any such trading stamp or other device, in consideration of any article or thing purchased of, or any services performed by him, shall be guilty of a misdemeanor.

3. It shall not be unlawful for any merchant or manufacturer to place his own tickets, coupons or other vouchers in or upon packages of goods sold or manufactured by him. Such tickets, coupons or other vouchers to be redeemed by such merchant or manufacturer either in money or merchandise, whether such packages are sold directly to the consumer or through retail merchants. Nor shall it be unlawful for any person to issue with such packages tickets, coupons or other vouchers so issued by such merchant or manufacturer.

Added by ch. 768 of 1900. In effect Sept. 1, 1900.

Unconstitutional. People ex rel. Madden v. Dycker, 72 App. Div. 308.

§ 384q. Issue and redemption of trading stamps and other devices.

1. No person shall sell or issue any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either singly or in definite number to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in lawful money of the United States.

2. Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either singly or in definite number to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise shall, upon presentation redeem the same either in goods, wares, or merchandise or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed on the face thereof, provided the same be presented for redemption in number or quantity aggregating in money value not less than five cents in each lot.

3. Any person engaged in any trade, business, or profession who shall distribute, deliver or present to any person dealing with him,

in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device which will entitle the holder thereof on presentation thereof either singly or in definite number, to receive either directly from the person issuing or selling same as set forth in the second paragraph hereof, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same as set forth in the second paragraph hereof, be liable to the holder thereof for the face value thereof and shall upon presentation of the same in lots or number aggregating in money value not less than five cents in each lot, redeem the same either in goods, wares or merchandise, or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed upon the face thereof.

4. Any person, firm or corporation who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor.

5. This act shall not apply to tickets, coupons or other vouchers placed by any merchant or manufacturer in or upon packages or goods sold or manufactured by him if such tickets, coupons or other vouchers are issued by such merchant or manufacturer in his own name, to be redeemed by him.

Added by ch. 657 of 1904.

Unconstitutional. People ex rel. Appel v. Zimmerman, 102 App. Div. 103.

§ 384r. Corrupt influencing of agents, employees or servants.

Whoever gives, offers or promises to an agent, employee or servant, any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action in relation to his principal's, employer's or master's business; or an agent, employee or servant who without the knowledge and consent of his principal, employer or master, requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner to his principal's, employer's or master's business; or an agent, employee or servant, who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employee or servant such commis-

sion, discount or bonus shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by such fine and by imprisonment for not more than one year.

Added by ch. 136 of 1905.

160b

PUBLIC HEALTH AND SAFETY.

TITLE XIII.

Of Crimes against the Public Health and Safety.

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- Sec. 431. Noisome or unwholesome substances, etc., in highway.
 432. Ambulances.
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 447c. Neglect to complete or plank floors of buildings constructed in cities.
 447d. Requiring more than the legal weight for a bushel.
 447e. Contamination of salt wells.
 447f. Bribery of labor representatives.

§ 385. "Public nuisance" defined.

A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:

1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or
2. Offends public decency; or
3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a stream, creek or other body of water which has been dredged or cleared at public expense, or a public park, square, street or highway; or
4. In any way renders a considerable number of persons insecure in life, or the use of property.

Am'd by ch. 367 of 1901.

Lottery, a nuisance, § 324, Penal Code.

Gambling apparatus, a nuisance, § 338, Penal Code.

Action for nuisance, § 1880 et al., Code Civ. Pro.

Generally. 4 Bl. Com. 167; Heeg v. Licht, 80 N. Y. 579; 8 Abb. N. C. 555; Lansing v. Smith, 8 Cow. 146; Prout's case, 4 C. H. Rec. 87; People v. Peiton, 36 App. Div. 450.

Legalizing. People v. N. Y. Gas Co., 6 Lans. 467; Delaney v. Blizzard, 7 Hun, 7; Phoenix v. Comrs., 12 How. Pr. 1; Patten v. N. Y. E. R. Co., 3 Abb. N. C. 306; Rochester v. Erickson, 46 Barb. 92; Campbell v. Seaman, 68 N. Y. 568; Ogdensburg v. Lovejoy, 58 N. Y. 62.

Intent not necessary. Taylor v. People, 6 Park. 347.

See also People v. Klock, 48 Hun, 277; People v. Crouse, 51 Hun, 494; 4 N. Y. Supp. 269; Flynn v. Taylor, 127 N. Y. 599; Spier v. City, 41 N. Y. St. Rep. 262; People v. Kellogg, 51 N. Y. St. Rep. 102; Pitcher v. Lennox, 16 Misc. 610; Lochner v. Village of Newark, 19 Misc. 457; Eldert v. Long Island Elec. R. Co., 28 App. Div. 455.

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- Subd. 1. Crematory. *Kobbe v. Village*, 23 App. Div. 248; 48 N. Y. Supp. 990.
- Sewage. *Lefrois v. County*, 24 App. Div. 421; 48 N. Y. Supp. 519; *Prescott's case*, 2 C. H. Rec. 161; *Prout's case*, 4 C. H. Rec. 87; *Lynch's case*, 6 C. H. Rec. 61; *People v. Casey*, 4 Park. 238; *Cropsey v. Murphy*, 1 Milt. 126; *Meeker v. Van Rensselaer*, 15 Wend. 397; *Fish v. Dodge*, 4 Den. 311; *Dubois v. Budlong*, 15 Abb. Pr. 45; *Hinckley v. Emerson*, 4 Cow. 351; *Board v. Casey*, 18 N. Y. St. Rep. 251.
- Subd. 2. People *v. Doris*, 14 App. Div. 117; 48 N. Y. Supp. 571; *People v. Muller*, 96 N. Y. 408; *Miller v. People*, 5 Barb. 203; *People v. Butler*, 4 Hun, 636; *Berry v. People*, 77 N. Y. 588; 1 N. Y. Cr. Rep. 43; *Barneschiotti v. People*, 69 N. Y. 612, aff'g 10 Hun, 137; *People v. Cutter*, 28 Hun, 465; *Jacobowsky v. People*, 64 N. Y. 659; *People v. Livingston*, 27 Hun, 106; *People v. Mauch*, 24 How. Pr. 276.
- Subd. 3. Coal hole cover. *Trustees v. Foster*, 156 N. Y. 354.
- Sidewalk obstruction. *Coon v. Fremont*, 25 App. Div. 250; 49 N. Y. Supp. 305.
- Platform. *Murphy v. Leggett*, 29 App. Div. 309; 51 N. Y. Supp. 472.
- Covered cellarway. *Jorgensen v. Squires*, 144 N. Y. 280; 63 N. Y. St. Rep. 688.
- Theater. *People v. Baldwin*, 1 Wh. Cr. C. 279.
- Bridge. *Chenango B. Co. v. Lewis*, 63 Barb. 111.
- Gas, etc. *McCannis v. C. G. Co.*, 40 Barb. 380.
- Limekiln. *Hutchins v. Smith*, 68 Barb. 251.
- See *Blanchard v. Western U. T. Co.*, 60 N. Y. 570; *People v. Goshen Road*, 11 Wend. 597; *Susq. T. Co. v. People*, 15 Wend. 267; *People ex rel. Cochen v. Dettmer*, 28 App. Div. 330.
- Subd. 4. Obstructing highway. *Tinker v. N. Y., O. & W. R. Co.*, 157 N. Y. 318, aff'g 92 Hun, 269.

§ 386. Unequal damage.

An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

§ 387. Maintaining a nuisance a misdemeanor.

A person, who commits or maintains a public nuisance, the punishment for which is not specially prescribed, or who willfully omits or refuses to perform any legal duty relating to the removal of such a public nuisance, is guilty of a misdemeanor.

Syracuse, etc., R. Co. v. Tully, 66 Barb. 25; *Simmons v. Everson*, 124 N. Y. 823; 36 N. Y. St. Rep. 267; *Wasmer v. D., L. & W. R. Co.*, 80 N. Y. 212; *Brown v. Cayuga & S. R. R. Co.*, 12 N. Y. 496; *Mosher v. Utica & S. R. R. Co.*, 8 Barb. 427.

§ 388. Permitting building to be used for nuisance, etc.

A person who,

1. Lets, or permits to be used, a building, or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance, or
2. Opens or maintains a place where opium, or any of its preparations, is smoked by other persons, or
3. At such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used, or

4. Visits or resorts to any such place for the purpose of smoking opium or its said preparations;

Is guilty of a misdemeanor.

Am'd by ch. 8 of 1889.

See §§ 333, 343, ante.

§ 389. Keeping gunpowder unlawfully.

A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor. A person who manufactures gunpowder, dynamite, nitro-glycerine, liquid or compressed air or gasses, except acetylene gas or other gases used for illuminating purposes, naphtha, gasoline, benzine or any explosive articles or compounds or manufactures ammunition, fireworks or other articles of which such substances are component parts in a cellar, room or apartment of a tenement or dwelling house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a misdemeanor. And a person who by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, injures or occasions the injury of the person or property of another, is punishable by imprisonment for not more than two years. Any person or persons who shall knowingly present, attempt to present or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding one thousand dollars and not less than three hundred dollars or imprisonment in a state prison for not less than one nor more than five years, or be subject to both such fine and imprisonment. Nothing in this section contained shall be construed to prohibit or forbid the manufacture and sale of soda-water, seltzer-water, ginger ale, carbonic or mineral water, or the charging with liquid carbonic acid gas of such waters or ordinary waters, or of beer, wines, ales or other malt and vinous beverages in such cellar, room or apartment of a tenement or dwelling house, or any building occupied in whole or in part by persons or families for living purposes.

Am'd by ch. 389 of 1887, ch. 494 of 1900, and ch. 486 of 1902.

See §§ 201, 636, 645, Penal Code.

Van Norden v. Robinson, 45 Hun, 570; 10 N. Y. St. Rep. 643; *People v. Sands*, 1 Johns. 78; *Bradley v. People*, 56 Barb. 73; *Myers v. Malcolm*, 6 Hill, 292; *Heeg v. Licht*, 80 N. Y. 579.

Constitutional. *People v. Lichtman*, 65 App. Div. 76; rev'd 178 N. Y. 63. What is not. *People v. Lichtman*, 173 N. Y. 63, aff'g 65 App. Div. 76.

§ 390. Throwing gas tar, etc., into public waters.

A person, who throws or deposits gas tar, or the refuse of a gas-house or gas-factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.

See § 444, post.

Mayor v. Furgeson, 23 Hun, 594.

PUBLIC HEALTH AND SAFETY. §§ 391-394

§ 391. Violation of quarantine laws by master of vessel.

A master of a vessel subject to quarantine or visitation by the health officer, arriving in the port of New York, who refuses or omits:

1. To proceed to and anchor his vessel at the place assigned for quarantine, at the time of his arrival; or

2. To submit his vessel, cargo and passengers, to the examination of the health officer, and to furnish all necessary information to enable that officer to determine the length of quarantine and other regulations to which they ought respectively to be subject; or

3. To remain with his vessel at quarantine during the period assigned for her quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given to them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 392. Giving false information relative to vessel, or permitting person to land before visit of health officers.

A master of a vessel hailed by a pilot who:

1. Gives false information to such pilot, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or,

2. Lands any person from his vessel or permits any person, except a pilot to come on board of his vessel, or unlades or transships any portion of his cargo, before his vessel has been visited and examined by the health officers; or,

3. Approaches with his vessel nearer the city of New York than the place of quarantine to which he may be directed, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or by both.

§ 393. Landing from vessel before visit of health officers.

A person, who, being on board any vessel at the time of her arrival at the port of New York, lands from such vessel, or unlades, or transships, or assists in unlading or transhipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 394. Going on board vessel at quarantine grounds, or entering quarantine grounds without leave.

A person who goes on board of, or has any communication or intercourse with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority, enters the quarantine grounds or anchorage, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both; and in addition thereto he may be de-

tained at quarantine so long as the health officer directs, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days, he may be detained at the marine hospital, for such further time as the health officer directs.

§ 395. Violating quarantine regulations.

A person who, having been lawfully ordered by a health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or willfully violates any quarantine law or regulation, is guilty of a misdemeanor.

People v. Mondon, 103 N. Y. 211; 4 N. Y. Cr. Rep. 561; People v. Runge, 3 N. Y. Cr. Rep. 87.

§ 396. Obstructing health officer in performance of his duty.

A person who willfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

Regan v. Fosdick, 19 Misc. 494.

§ 397. Willful violation of health laws.

1. A person who wilfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor.

2. A person who wilfully violates any provision of the health laws, or any regulation lawfully made or established by any public officer or board under authority of the health laws the punishment for violating which is not otherwise prescribed by those laws, or by this Code, is punished by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both.

Am'd by ch. 443 of 1905.

Regan v. Fosdick, 19 Misc. 494.

§ 398. Unlicensed piloting.

A person other than a lawfully authorized branch Hell Gate pilot, who pilots, or offers to pilot, or tows or offers to tow, any boat or vessel (except barges, vessels under fifty-five tons burthen, and canal boats actually used in navigating the canals), through that part of the East river commonly called Hell Gate, is guilty of a misdemeanor. But no pilotage shall be charged to any vessel under a coasting license on entering or departing from the port of New York by way of the East river, called Hell Gate, unless such vessel actually employs a pilot, and the making such such* charge or demand without such employment shall be deemed a misdemeanor.

Am'd by chs. 493 of 1881 and 384 of 1882.

See chs. 115 of 1865 and 493 of 1881, 202 of 1889.

Henderson v. Spofford, 10 Abb. (N. S.) 140; 3 Daly, 861; Comra., etc. v. Pac. Mail S. S. Co., 52 N. Y. 609; Stillwell v. Raynor, 1 Daly, 47; People v. Sperry, 50 Barb. 170; People v. Francisco, 10 Abb. 80; 4 Park. 139; 18 How. 475.

§ 399. Coasting steamers excepted.

The last section does not apply to vessels propelled wholly or partly by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.

People v. Winant, 24 Misc. 363; Nickerson v. Mason, 13 Wend. 64; Sturgis v. Spofford, 45 N. Y. 446; 52 Barb. 436; Griswold v. Masters, etc., 9 Johns. 76.

* So in original.

PUBLIC HEALTH AND SAFETY. §§ 400, 401

§ 400. Acting as port-warden without authority.

A person who not being a port-warden, assumes or undertakes to act as such, or undertakes the performance of any of the duties prescribed by law, as pertaining to the office of port-warden; and a person who knowingly employs any other than the wardens for the performance of such duties; and a person who issues any certificate of a survey on vessels, materials or goods damaged, with intent to avoid the provisions of any statute, is guilty of a misdemeanor.

Tinkham v. Tapscott, 17 N. Y. 141; Wardens v. Cartwright, 4 Sandf. 236; Curtin v. People, 89 N. Y. 621, aff'g 26 Hun, 564.

§ 401. Apothecary, druggist or pharmacist, omitting to label drugs, or labeling them wrongly.

Any person, who in putting up any drug, medicine or food or preparation used in medical practice, or making up any prescription, or filling any order for drug, medicines, food or preparation omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitutes or dispenses a different article for or in lieu of any article prescribed ordered, or demanded, or puts up a greater or less quantity of any ingredient specified in any such prescription, order, or demand than that prescribed ordered, or demanded, or otherwise deviates from the terms of the prescription, order, or demand, by substituting one drug for another, is guilty of a misdemeanor; provided, however, that, except in the case of physicians' prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. Upon a second conviction for a violation of this section the offender must be sentenced to imprisonment, for a term of not less than ten days nor more than one year, and to the payment of a fine of not less than ten dollars nor more than five hundred dollars. The third conviction of a violation of any of the provisions of this section, in addition to rendering the offender liable to the penalty prescribed by law for a misdemeanor; shall forfeit any right which he may possess under the law of this state at the time of such conviction, to engage as proprietor, agent, employee or otherwise, in the business of an apothecary, pharmacist, or druggist, or to compound, prepare or dispense prescriptions or orders for drugs, medicines or foods or preparations used in medical practice; and the offender shall be by reason of such conviction disqualified from engaging in any such business as proprietor, agent, employee or otherwise or compounding, preparing or dispensing medical prescriptions or orders for drugs, medicines, or foods or preparations used in medical practice.

2. This act shall not affect or impair any liability, penalty or punishment under the provisions of section four hundred and one as the same existed prior to the time this act takes effect, but the same may be enforced, prosecuted or inflicted as fully and to the same extent as though this act had not been passed; and all actions civil or criminal instituted under or by virtue of said

section as the same existed prior to the passage of this act, and pending immediately prior to the taking effect hereof, may be prosecuted and defended to final effect in the same manner as though this act had not been passed.

Am'd by ch. 442 of 1905.

Am'd by ch. 649 of 1907.

See § 56, subd. 5, Code Crim. Pro.

§ 402. Selling poison without labeling and recording the sale.

It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed, to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poisons printed or written thereupon in plain, legible characters, which schedules are as follows, to wit:

SCHEDULE A.

Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

SCHEDULE B.

Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophantus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, cresote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or *materia medica*, is liable to be destructive to adult human life in quantities of sixty grains or less, and such other poisons as the state board of pharmacy, under the authority given to it by the public health law, may from time to time add to either of said schedules. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines or poisons on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer enclosure of an original package containing any of the articles enumerated under said schedule A, a suitable label or brand in red ink with the word "poison"

PUBLIC HEALTH AND SAFETY. §§ 403-405a

upon it. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

Am'd by ch. 442 of 1905.

See § 56, subd. 5, Code Crim. Pro.

§ 403.

The provisions of section four hundred and one shall not apply to the practice of a practitioner of medicines who is not the proprietor of a store for the dispensing or retailing of drugs, medicines and poisons, or who is not in the employ of such a proprietor, and shall not prevent practitioners of medicine from supplying their patients with such articles as they may deem proper, and except as to the labeling of poisons shall not apply to the sale of medicines or poisons at wholesale when not for the use or consumption of the purchaser; provided, however, that the sale of medicines or poisons at wholesale shall continue to be subject to such regulations as from time to time may be lawfully made by the board of pharmacy or by any competent board of health.

This § 403 added by ch. 442 of 1905.

Former § 403 repealed by ch. 442 of 1905.

See § 56, subd. 5, Code Crim. Pro.

§ 404.

Any person who violates any provision of article eleven of the public health law for which no other penalty is imposed, is guilty of a misdemeanor.

Added by ch. 442 of 1905.

Former § 404 repealed by ch. 442 of 1905.

§ 405. Regulations as to prescriptions of opium and morphine.

A person who, except on the written or verbal order of a physician, refills more than once prescriptions containing opium, morphine or preparations of either, in which the dose of opium exceeds one-fourth grain or morphine one-twentieth grain, is guilty of a misdemeanor.

Former § 405 repealed by ch. 442 of 1905, which statute changed the number of this section from 405a to 405.

Added by ch. 692 of 1893.

§ 405a. Unlawful sale of cocaine, etc.

It shall be unlawful for any person to sell, furnish or dispose of alkaloid cocaine or its salts, or alpha or beta eucaine or their salts or any admixture of cocaine or eucaine, except upon the written prescription of a duly registered physician, which prescription shall be retained by the person who dispenses the same, shall be filled but once and of which no copy shall be taken by any person; except, however, that such alkaloid cocaine or its salts, and alpha or beta eucaine or their salts may lawfully be sold at wholesale upon the written order of a licensed pharmacist or licensed druggist, duly registered practicing physician, licensed veterinarian or licensed dentist provided that the wholesale dealer shall affix or cause to be affixed to the bottle, box, vessel or package containing the article sold, and upon the outside wrapper of the package as

originally put up, a label distinctly displaying the name and quantity of cocaine or its salts, alpha or beta eucaine or their salts, sold, and the word "poison" with the name and place of business of the seller, all printed in red ink; and provided also that the wholesale dealer shall before delivering any of the articles make or cause to be made in a book kept for the purpose an entry of the sale thereof stating the date of sale, the quantity, name and form in which sold, the name and address of the purchaser, and the name of the person by whom the entry is made; and the said book shall be always open for inspection by the proper authorities and shall be preserved for at least five years after the date of the last entry made therein. Any person who violates any of the provisions of this section shall be guilty of a felony punishable by imprisonment of not more than one year or a fine of not more than one thousand dollars, or both.

Added by ch. 424 of 1907.

§ 405b. Careless distribution of medicines, drugs and chemicals.

Any person, firm, or corporation, who distributes, or causes to be distributed, any free or trial samples of any medicine, drug, chemical or chemical compound, by leaving the same exposed upon the ground, sidewalk, porch, doorway, letter-boxes, or in any other manner, that children may become possessed of the same, shall be guilty of a misdemeanor punishable by a fine not exceeding twenty-five dollars for each offense, but this section shall not apply to the direct delivery of any such article to an adult.

Added by ch. 494 of 1903.

See ch. 344 of 1907. Practice of medicine.

§ 406. Concealing foreign matter in merchandise.

A person who, with intent to defraud, while putting up in a barrel, bag, bale, box, or other package, cotton, hops, hay, or any other article of merchandise whatever, usually sold by weight in such packages, places or conceals therein any other substance or thing whatever, in a case where special provision for the punishment thereof is not otherwise made by statute, is guilty of a misdemeanor.

See § 580, post.

§ 407. Adulterating food, drugs, liquors, etc.

A person who, either,

1. With the intent that the same may be sold as unadulterated or undiluted, adulterates or dilutes wine, milk, distilled spirits or malt liquor, or any drug, medicine, food or drink, for man or beast; or

2. Knowing that the same has been adulterated or diluted, offers for sale or sells the same as unadulterated or undiluted, or without disclosing or informing the purchaser that the same has been adulterated or diluted, in a case where special provision has not been made by statute, for the punishment of the offense, or,

3. Sells or offers to sell, or stores or transports with intent to sell for any purpose other than cooling beer in casks, ice cut from any canal or from the wide waters of basins of any canal, unless the ice so sold, or offered for sale or stored or transported, is con-

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tained in a building, cart, car, sleigh, float or receptacle upon which is plainly marked in Roman or capital letters, not less than eight inches square, the words, "canal ice;" or,

4. Who shall adulterate maple sugar, maple syrup or honey, with glucose, cane sugar or syrup, beet sugar or syrup, or any other substance for the purpose of sale, or who shall knowingly sell or offer for sale maple sugar, maple syrup or honey that has been adulterated in any way, shall be deemed guilty of a misdemeanor.

5. Violate any provision of section thirty of the domestic commerce law, relating to canned and preserved food.

Am'd by ch. 141 of 1889, ch. 634 of 1892.

Added by ch. 551 of 1896.

See ch. 394 of 1893.

People v. Schaffer, 41 Hun, 23; People v. Cipperly, 37 Hun, 324, rev'd 101 N. Y. 634; 4 N. Y. Cr. Rep. 69; People v. Gillson, 106 N. Y. 403; People v. Arensberg, 108 N. Y. 388; Polinsky v. People, 73 N. Y. 65; People v. Kibler, 106 N. Y. 321; People v. Bischoff, 14 N. Y. St. Rep. 581; People v. Mahaney, 41 Hun, 26; People v. Marx, 99 N. Y. 377; People v. McGann, 34 Hun, 358; People v. Fulle, 12 Abb. N. C. 196; 4 N. Y. Cr. Rep. 172; People v. West, 106 N. Y. 293; People v. Waterbury, 44 Hun, 493; People v. Storm, 8 N. Y. St. Rep. 907; Schrumpf v. People, 14 Hun, 10; People v. Briggs, 114 N. Y. 63; 22 N. Y. St. Rep. 317; People v. Hill, 9 N. Y. St. Rep. 336; 44 Hun, 472; People v. Eddy, 35 N. Y. St. Rep. 146; People v. Hodnett, 68 Hun, 341; 51 N. Y. St. Rep. 341.

§ 407a. Selling substitutes for pure juice of fruits, etc.

Any person who shall knowingly sell, offer or expose for sale, or give away, any compound or preparation composed, in whole or in part, of any unwholesome, deleterious or poisonous acid, or other unwholesome, deleterious or poisonous substance, as a substitute for the pure, unadulterated and unfermented juice of lemons, limes, oranges, currants, grapes, apples, peaches, plums, pears, berries, quinces, or other natural fruits, representing such compound or preparation to be the pure, unadulterated and unfermented juice of any of such fruits; or who, in the mixing, decoction, or preparation of food or drink, shall knowingly use any such compound or preparation in the place of, or as a substitute for, the pure, unadulterated and unfermented juice of one or more of such fruits, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than two hundred and fifty dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

Added by ch. 343 of 1899.

§ 408. Disposing of tainted food.

A person who with intent that the same may be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever which, to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink, or medicine, is guilty of a misdemeanor.

People v. Parker, 38 N. Y. 85; Goodrich v. People, 19 N. Y. 580; 3 Park. 622.

§ 408a. Violations of the agricultural law.

Any person who disregards, disobeys or violates any proclamation, notice, order or regulation, lawfully issued or prescribed by the commissioner of agriculture, for the suppression or prevention of the spread of infectious or contagious diseases among domestic animals, or who violates any of the provisions of sections eighty and eighty-two of article five of the agricultural law, is guilty of a misdemeanor.

Added by ch. 692 of 1893; am'd by chs. 426 of 1894 and 554 of 1897.

People v. Piat, 19 Misc. 132.

§ 409. Making, et cetera, dangerous weapons.

A person who manufactures, or causes to be manufactured, or sells or keeps for sale, or offers, or gives, or disposes of any instrument or weapon of the kind usually known as a slung-shot, billy, sandclub or metal knuckles, to any person or a person who offers, sells, loans, leases or gives any gun, revolver, pistol or other firearm or any air-gun spring-gun or other instrument or weapon in which the propelling force is a spring or air or any instrument or weapon commonly known as a toy pistol or in or upon which any loaded or blank cartridges are used, or may be used, or any loaded or blank cartridges or ammunition therefor to any person under the age of sixteen years is guilty of a misdemeanor.

Am'd by ch. 46 of 1884, ch. 140 of 1889, ch. 603 of 1899, ch. 222 of 1900, and ch. 92 of 1905.

§ 410. Carrying, et cetera, dangerous weapons.

A person who attempts to use against another, or who carries, or possesses any instrument or weapon of the kind commonly known as a slungshot, billy, sandclub or metal knuckles, or who with intent to use the same against another, carries or possesses a dagger, dirk or dangerous knife is guilty of a felony. Any person under the age of sixteen years, who shall have, carry or have in his possession in any public place any of the articles named or described in the last section which it is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor. Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city or village of this state, any pistol, revolver or other firearm without a written license therefor, theretofore issued to him by a police magistrate of such city or village, or in such manner as may be prescribed by ordinance of such city or village shall be guilty of a misdemeanor. No person not a citizen of the United States, shall have or carry firearms or dangerous weapons in any public place at any time. This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, policemen or to other duly appointed peace officers, nor to duly authorized military or civil organizations when parading, nor to the members thereof when going to and from the places of meeting of their respective organizations.

Am'd by chs. 46 of 1884, 140 of 1889, and ch. 92 of 1905.

People v. Emerson, 20 N. Y. St. Rep. 18; 6 N. Y. Cr. Rep. 180; 5 N. Y. Supp. 375; People v. Izzo, 89 N. Y. St. Rep. 166; 14 N. Y. Supp. 907.

PUBLIC HEALTH AND SAFETY. §§ 411-412

§ 411. Possession, presumptive evidence.

The possession, by any person other than a public officer, of any of the weapons specified in the last section, concealed or furtively carried on the person, is presumptive evidence of carrying, or concealing, or possessing, with intent to use the same in violation of that section.

People v. Hill, 44 Hun, 472; People ex rel. Miller v. Ryder, 124 N. Y. 500; 36 N. Y. St. Rep. 468; rev'd 58 Hun, 411; 34 N. Y. St. Rep. 324; 12 N. Y. Supp. 50; People v. Izzo, 39 N. Y. St. Rep. 166; 14 N. Y. Supp. 907.

§ 411a. Certain weapons to be destroyed.

The carrying of a pistol, revolver, or of an instrument or weapon of the kind usually known as slungshot, billy, sandclub, metal knuckles, or of a dagger, dirk or dangerous knife, without lawful permission, license or authority so to do, by any person save a peace officer, is a nuisance and such weapons are hereby declared to be nuisances and, when any one or more of the above described instruments or weapons shall be taken from the possession of any person the same shall be surrendered to the sheriff of the county wherein the same shall be taken, except that, in cities of the first class the same shall be surrendered to the head of the police force or department of said city. The officer to whom the same may be so surrendered shall, except upon certificate of a judge of a court of record, or of the district attorney, that the non-destruction thereof is necessary or proper in the ends of justice, proceed at such time or times as he deems proper, and at least once in each year, to destroy or cause to be destroyed any and all such weapons or instruments, in such manner and to such extent that the same shall be and become wholly and entirely ineffective and useless for the purpose for which destined and harmless to human life or limb.

Added by ch. 582 of 1907.

§ 412. Having narcotics, etc., with intent to administer.

1. A person (other than a duly licensed physician or surgeon engaged in the lawful practice of his profession) who has in his possession any narcotic or anaesthetic substance, compound or preparation, capable of producing stupor or unconsciousness, with intent to administer the same or cause the same to be administered to another, without the latter's consent, unless by direction of a duly licensed physician, is guilty of a felony, punishable by imprisonment in the state prison for not more than ten years.

2. The possession by any person (other than as exempted in the foregoing subdivision) of any such narcotic or anaesthetic substance or compound, concealed or furtively carried on the person, is presumptive evidence of an intent to administer the same or cause the same to be administered in violation of the provisions of this section.

Added by ch. 42 of 1897.

§ 413. Negligently managing and refusing to extinguish fires.

A person who:

1. Willfully or negligently sets fire to, or assists another to set fire to any waste or forest lands belonging to the state or to another person whereby such forests are injured or endangered; or
2. Negligently sets fire to his own woods, by means whereof the property of another is endangered; or
3. Negligently suffers any fire upon his own lands to extend beyond the limits thereof; or
4. Having been lawfully ordered to repair to a place of a fire in the woods, and to assist in extinguishing it, omits without lawful excuse to comply with the order;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892, and ch. 692 of 1898.

See § 58, subd. 21, Code Crim. Pro.

§ 414. Obstructing attempts to extinguish fires.

A person who at any burning of a building is guilty of any disobedience to lawful orders of a public officer or fireman, or of any resistance to, or interference with, the lawful efforts of a fireman or company of firemen, to extinguish the same, or of any disorderly conduct likely to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 415. Ferries.

A person who:

1. Maintains a ferry for profit or hire upon any of the waters of this state without authority of law; or,
2. Having entered into a recognizance to keep or maintain a ferry, violates the condition of such recognizance;

Is guilty of a misdemeanor.

Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either county.

Am'd by ch. 692 of 1892.

Mayor v. Starin, 106 N. Y. 11; 8 N. Y. St. Rep. 655; People v. Babcock, 11 Wend. 587; Aiken v. Western R. R. Co., 20 N. Y. 870; People v. Mago, 69 Hun, 560.

§ 415a. Penalty for neglect to post schedule of ferry rates.

A person, corporation or association operating any ferry in this state, or between this state and any other state, operating from or to a city of five hundred thousand inhabitants or over, posting a false schedule of ferry rates, or neglecting to post in a conspicuous and accessible place in each of its ferry houses, in plain view of the passengers, a schedule, plainly printed in the English language, of the rates of ferries charged thereon and authorized by law to be charged for ferriage over such ferry, is guilty of a misdemeanor.

Added by ch. 692 of 1898.

PUBLIC HEALTH AND SAFETY. §§ 416-418

§ 416. Unlawful acts of and neglect of duty by railroad officials.

An officer, agent, attorney or employe of a railroad corporation, who:

1. Offers a place, appointment, position or any other consideration to a railroad commissioner or to a secretary, clerk, agent, employe or expert employed by the board of railroad commissioners; or

2. After due notice, neglects or refuses to make or furnish any statement or report lawfully required by the board of railroad commissioners or willfully hinders, delays or obstructs such commissioners in the discharge of their official duties,

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892, and ch. 892 of 1893.

Aiken v. Western R. R. Co., 20 N. Y. 370; Almy v. Harris, 5 Johns. 175;

Mayor, etc. v. Starin, 106 N. Y. 12; People v. Babcock, 11 Wend. 587;

People v. Mago, 58 N. Y. St. Rep. 307.

§ 417. Misconduct of railroad commissioners and of their employes.

Any railroad commissioner, or any secretary, clerk, agent, expert or other person employed by the board of railroad commissioners, who:

1. Directly or indirectly solicits or requests from or recommends to any railroad corporation, or to any officer, attorney or agent thereof, the appointment of any person to any place or position; or

2. Accepts, receives or requests, either for himself or for any other person, any pass, gift or gratuity from any railroad corporation; or,

3. Secretly reveals to any railroad corporation, or to any officer, member, or employe thereof, any information gained by him from any other railroad corporation;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 418. Person unable to read not to act or be employed as engineer.

Any person unable to read the time-tables of a railroad and ordinary handwriting, who acts as an engineer or runs a locomotive or train on any railroad in this state; or any person who, in his own behalf, or in the behalf of any other person or corporation, knowingly employs a person so unable to read to act as such engineer or to run any such locomotive, is guilty of a misdemeanor; or who employs a person as a telegraph operator who is under the age of eighteen years, or who has less than one year's experience in telegraphing, to receive or transmit a telegraphic message or train order for the movement of trains, is guilty of a misdemeanor.

Am'd by ch. 692 of 1892, and ch. 892 of 1893.

§ 419. Misconduct of officials or employes on elevated railroads.

Any conductor, brakeman, or other agent or employe of an elevated railroad, who:

1. Starts any train or car of such railroad, or gives any signal or order to any engineer or other person to start any such train or car, before every passenger therein who manifests an intention to depart therefrom by arising, or moving toward the exit thereof, has departed therefrom; or before every passenger on the platform or station at which the train has stopped, who manifests a desire to enter the train, has actually boarded or entered the same, unless due notice is given by an authorized employe of such railroad that the train is full, and that no more passengers can then be received; or,
2. Obstructs the lawful ingress or egress of a passenger to or from any such car; or,
3. Opens a platform gate of any such car while the train is in motion, or starts such train before such gate is firmly closed;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 420. Intoxication or other misconduct of railroad or steamboat employes.

1. Any person who, being employed upon any railway as engineer, conductor, baggagemaster, brakeman, switch-tender, fireman, bridge-tender, flagman, signal man, or having charge of stations, starting, regulating or running trains upon a railroad, or being employed as captain, engineer or other officer of a vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties; or

2. An engineer, conductor, brakeman, switch-tender, or other officer, agent or employe of any railroad corporation, who willfully violates or omits his duty as such officer, agent or employe, by which human life or safety is endangered, the punishment of which is not otherwise prescribed;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

See § 56, subd. 9, Code Crim. Pro.

§ 421. Failure to ring bell, etc.

A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell or sound the whistle, upon such locomotive or cause the same to be rung or sounded at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities), or who fails to ring the bell on the locomotive, or fails to cause the same to be rung from such point until the crossing is passed; or any officer or employe of a corporation in charge of a locomotive, train or car, who shall willfully obstruct, or cause to be obstructed, any farm or highway crossing with any locomotive, train or car for a longer period than five consecutive minutes, is guilty of a misdemeanor.

Am'd by ch. 358 of 1891 and ch. 759 of 1900. In effect Sept. 1, 1900.

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Powell v. Railroad Co., 14 N. Y. St. Rep. 912; **People v. N. Y. C. R. Co.**, 13 N. Y. 78; 25 Barb. 109; **Petrie v. N. Y. C. & H. R. R. Co.**, 49 N. Y. St. Rep. 283; 66 Hun, 287; **Phillips v. N. Y. C. & H. R. R. R. Co.**, 84 Hun, 415; **Vandewater v. N. Y. & N. E. R. R. Co.**, 135 N. Y. 587; 63 Hun, 187; 43 N. Y. St. Rep. 421.

§ 422. Placing passenger car in front of baggage car.

A person, being an officer or employe of a railway company, who knowingly places, directs, or suffers a freight, lumber, merchandise or oil car to be placed in rear of a car used for the conveyance of passengers in a railway train, is guilty of a misdemeanor.

Am'd by ch. 267 of 1889.

Bushby v. N. Y., L. E. & W. R. Co., 107 N. Y. 380; 12 N. Y. St. Rep. 9.

§ 423. Platforms and heating apparatus of passenger car.

A railway corporation, or any officer or director thereof having charge of its railroad, or any person managing a railroad in this state, or any person or corporation running passenger cars upon a railroad into or through this state, who:

1. Fails to have the platforms or ends of the passenger cars run upon such railroad constructed in such manner as will prevent passengers falling between the cars when in motion; or,

2. Except temporarily, in case of accident or emergency, heats any passenger car, while in motion, on any such railroad more than fifty miles in length, except a narrow-gauge railroad which runs only mixed trains, between October fifteenth and May first, by any stove or furnace inside of or suspended from such car, except stoves of a pattern and kind approved by the board of railroad commissioners for cooking purposes in dining-room cars and except within the extended time allowed by the railroad commissioners in pursuance of law for introducing other heating apparatus;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 424. Guard posts; automatic couplers.

All corporations and persons other than employes operating any steam railroad in this state,

1. Failing to cause guard posts to be placed in prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car; or,

2. Failing after November 1, 1892, to equip all their own freight cars, run and used in freight or other trains on such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the board of railroad commissioners, in pursuance of law, for equipping such car with such couplers, is

guilty of a misdemeanor, punishable by a fine of five hundred dollars for each offense.

Am'd by ch. 692 of 1892, and ch. 664 of 1896.
See § 199, ante.

§ 425. Officers of railroad companies to be uniformed.

A person who,

1. Advises or induces any one, being an officer, agent or employe of a railway company, to leave the service of such company, because it requires a uniform to be worn by such officer, agent or employe, or to refuse to wear such uniform, or any part thereof; or

2. Uses any inducement with a person employed by a railway company, to go into the service or employment of any other railway company, because a uniform is required to be worn; or,

3. Wears the uniform designated by a railway company without authority;

Is guilty of a misdemeanor.

People v. Rontey, 6 N. Y. Cr. Rep. 259.

§ 426. Riding on freight cars.

1. A person who rides on any engine or any freight or wood car of any railway company, without authority or permission of the proper officers of the company or of the person in charge of said car or engine; or

2. Who gets on any car or train while in motion (for the purpose of obtaining transportation thereon as a passenger); or

3. Who willfully obstructs, hinders or delays the passage of any car lawfully running upon any steam or horse or street railway;

Is guilty of a misdemeanor.

Am'd by ch. 458 of 1890.

Barrett v. N. Y. C. & H. R. R. Co., 157 N. Y. 667; Kolzen v. B. & S. R. R. Co., 48 N. Y. St. Rep. 667; People v. Rontey, 6 N. Y. Cr. Rep. 259.

§ 427. Dangerous exhibitions; bathing.

A person who, being lessee or occupant of any place of amusement, or any plot of ground or building, uses it or allows it to be used for the exhibition of skill, in throwing any sharp instrument at or toward any human being; or aims or discharges any bow-gun, pistol or firearm of any description whatever, or allows one to be aimed or discharged at or towards any human being; or who being owner, lessee, proprietor or manager of any surf-bathing place, neglects at any time during the bathing season to maintain surf or life boats, or other life-saving apparatus, duly equipped and manned in the manner and to the extent prescribed by law;

Is guilty of a misdemeanor.

People v. Parker, 137 N. Y. 537.

§ 427a. Unauthorized manufacture, sale or use of illuminating oils.

A person who violates any provision of the domestic commerce law, relating to the standard, manufacture, sale, use or storage of

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any oil or burning fluid, wholly or partly composed of naphtha, coal oil, petroleum or products manufactured therefrom, or of other substance or materials which will flash at a temperature below one hundred degrees Fahrenheit, or relating to the burning or carriage of any such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit is guilty of a misdemeanor.

Added by ch. 551 of 1896.

§ 428. Fire and light on vessels in certain counties.

A person who violates any of the provisions of section twenty-six of the domestic commerce law is guilty of a misdemeanor.

Am'd by ch. 551 of 1896.

§ 429. Ice cuttings and ice bridges.

A person or corporation cutting ice in or upon any waters within the boundaries of this state, for the purpose of removing the ice for sale or use, must surround the cuttings and openings made with fences or guards of boards or other material sufficient to form an obstruction to the free passage of persons through such fences or guards into the place where such ice is being cut. Such fences or guards must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed therein to the thickness of at least three inches, or until the ice about such openings has melted or broken up. Whoever omits to comply with this section is guilty of a misdemeanor. A person who cuts, loosens or detaches from any bay, estuary, inlet, or main, or island shore of the Saint Lawrence river, within the jurisdiction of this state, any field of ice, or large body of ice, which, when so loosened or detached forms or is likely to form a bridge or passage way between an island of the river and the main shore, or between any islands of such river, is guilty of a misdemeanor. The sheriff of the county of Saint Lawrence may appoint one or more deputies to patrol the Saint Lawrence river within the county at such times as shall seem to him proper, and to arrest any persons found engaged in a violation of this section; the fees and expenses of such deputies for such services shall be a county charge against said county, and shall be audited and paid in the same manner as other county charges.

Am'd by ch. 753 of 1894, ch. 584 of 1900, and ch. 326 of 1905.
Sickles v. New Jersey Ice Co., 153 N. Y. 87, rev'd, 80 Hun, 216.

§ 429a. Detaching ice for bridge forbidden.

Added by ch. 602 of 1898. Repealed by ch. 753 of 1894.
See § 429.

§ 430. Articles in imitation of food.

A person, who sells or manufactures, exposes or offers for sale as an article of food, any substance in imitation thereof, without disclosing the imitation by a suitable and plainly visible mark or brand, is guilty of a misdemeanor.

People v. Arensberg, 103 N. Y. 388; People v. Hill, 44 Hun, 472.

§ 431. Noisome or unwholesome substances, etc., in highway.

A person who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel,

either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

§ 432. Ambulances.

A person, who willfully stops or obstructs the passage of any ambulance or vehicle used for the transportation of sick or wounded persons or animals upon any public street, highway or place, or who willfully injures the same, or willfully drives any vehicle into collision therewith, is guilty of a misdemeanor. All sheriffs, constables and police officers must, when called upon by the person in charge of such ambulance or vehicle, aid in placing sick or wounded persons or animals therein, and in enforcing the provisions of this section.

§ 433. Using net or weir unlawfully in Hudson river.

A person, who uses any net or weir for setting or attaching nets, or a pole or other fixture in any part of the river Hudson, except as permitted by statute, is guilty of a misdemeanor.

§ 433a. Lights upon swing bridges.

A corporation, company or individual, owning, maintaining or operating a swing bridge across the Hudson river, who during the navigation season between sundown and sunrise, neglects to keep and maintain upon every such bridge the lights required by law, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 434. Exposing person affected with a contagious disease, in a public place.

A person, who willfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

Matter of Boyce, 43 Misc. 297.

§ 435. False rumors as to public funds, etc.

A person, who, with intent to affect the market price of the public funds of this state or of the United States, or of any state or territory thereof, or of a foreign country or government, or of the stocks, bonds, or other evidences of debt of a corporation or association, or the market price of gold or silver coin or bullion, or any merchandise or commodity whatever,

1. Without lawful authority, falsely signs the name of an officer of a corporation, or of any other person to a letter, message, or other paper; or

2. Utters or circulates such a letter, message, or paper, knowing that the same has been so falsely signed; or

3. Knowingly circulates any false statement, rumor, or intelligence;

Is punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than three years or both.

"Circulates" defined. People v. Goslin, 67 App. Div. 16.

§ 436. Eavesdropping.

A person who secretly loiters about a building, with intent to overhear discourse therein, and to repeat or publish the same to vex or annoy or injure others, is guilty of a misdemeanor.

§ 437. Destroying invoice.

A person, who willfully destroys or suppresses an invoice, bill of lading, or any other document, writing, or thing whatever, which tends to show the ownership of wrecked property, is guilty of a misdemeanor.

§ 438. False labels.

A person who, with intent to defraud, either,

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label, or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced, or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or

2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or

3. Sells or exposes for sale any goods in bulk to which no name or trade-mark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the punishment for such offense is not specially provided for otherwise by statute, is guilty of a misdemeanor.

Am'd by ch. 46 of 1889.

See § 56, subd. 5, Code Crim. Pro. See § 580, post.

Williams v. Spence, 25 How. 386; Rudder v. Huntington, 8 Sandf. 252; Low v. Hall, 47 N. Y. 104; Mayor, etc. v. Nichols, 4 Hill, 209; Materne v. Horwitz, 101 N. Y. 469; Knight v. Cunningham, 6 Hun, 196.

§ 438a. Using false marks as to manufacture.

A person who, with intent to defraud or to enable another to defraud any person, manufactures or knowingly sells or causes to be manufactured or sold, any article, marked, stamped or branded or encased or inclosed in any box, bottle or wrapper, having thereupon any engraving or printed label, stamp, imprint, mark or trade mark which article is not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving, printed label, stamp, imprint, mark or trade mark, is guilty of a misdemeanor.

¹ Added by ch. 692 of 1893

§ 438b. Penalty for selling half wine not labeled.

A person who sells, offers for sale or manufactures with intent to sell, any wine known as "half wine," which is not stamped, marked or labeled as required by law, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 439. Skimmed milk.

A person, who sells or offers for sale, milk from which the whole or a part of the cream has been skimmed or removed, without disclosing the fact, or having a mark or label, plainly and legibly stating the fact, conspicuously affixed to every can or vessel containing the same, under circumstances not constituting an offense, for the punishment of which provision is otherwise specially made by statute, is guilty of a misdemeanor.

People v. Fauerback, 5 Park. 311; *Verona, etc., Co. v. Murtaugh*, 50 N. Y. 314.

§ 440. Master of vessel bringing foreign convict.

A person being the master or commander of any vessel, or boat, arriving from a foreign country, who knowingly brings into this state a person who has been, or is a foreign convict of any offense, which if committed in this state would be punishable therein, is guilty of a misdemeanor.

See § 153, ante.

§ 441. Non-resident taking or planting oysters.

A person, who not being at the time an actual inhabitant and resident of this state, plants oysters in the waters of this state, without the consent of the owner of the same, or of the shore, or gathers oysters or other shell fish from their beds of natural growth, in any such waters on his own account or for his own benefit, or the benefit of a non-resident employer, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars, or both.

See § 56, subd. 24, Code Crim. Pro.

People v. Lowndes, 130 N. Y. 484; 42 N. Y. St. Rep. 360, rev'd 55 Hun. 460; 8 N. Y. Supp. 908; 30 N. Y. St. Rep. 168; *McCarthy et al. v. Holman*, 10 Week. Dig. 501; *People v. Hasen*, 121 N. Y. 317; 13 N. Y. St. Rep. 72.

§ 442. Use of certain dredges.

A person who uses a dredge or drag operated by steam, or any dredge or drag weighing over thirty pounds, for the purpose of catching or taking oysters or other shell fish from beds of natural growth in the waters of this state is guilty of a misdemeanor.

Am'd by ch. 526 of 1888.

Matter of Vreeland, 15 N. Y. St. Rep. 857; *In re Thomas*, 2 N. Y. Supp. 39.

§ 443. Mock auctions.

A person who buys or sells, or pretends to buy or sell, any goods, wares, or merchandise, or any species of property, except ships,

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vessels, or real or leasehold estate, exposed for sale by auction, if an actual sale, purchase, and change of ownership therein does not thereupon take place, is guilty of a misdemeanor, punishable by imprisonment for thirty days, or by fine not exceeding one hundred dollars, or both.

See § 574, post.

People v. Lindenborn, 23 Misc. 427; Ranney v. People, 22 N. Y. 418.

§ 444. Interfering with navigation.

A person who throws, or causes, or permits to be thrown, from any boat, scow, or other vessel, or in any other manner, into any of the navigable waters of this state, including bays, sounds and harbors, any earth, ashes, cinders, stone, or other material, or who builds any structure therein, which will in any manner lessen the depth of such waters, or interfere with the free and safe navigation thereof, is guilty of a misdemeanor.

See § 390, ante.

§ 445. Maintaining private insane asylums.

A person who conducts or maintains a private insane asylum, or institution for the care or treatment of persons of unsound mind, without a license issued and granted to such person according to law, is guilty of a misdemeanor.

§ 446. Entry into agricultural fair grounds.

A person who wrongfully and fraudulently enters any agricultural fair grounds, without paying the entrance fee, is guilty of a misdemeanor.

§ 447. Drugging person, etc.

A person who administers any drug or stupefying substance to another, with the intent, while such person is under the influence thereof, to induce such person to enter the military or naval service of the United States, of this state, or of any other state, country or government, is guilty of a misdemeanor.

See § 218, subd. 2, ante.

§ 447a. Negligently furnishing insecure scaffolding.

A person or corporation employing or directing another to do or perform any labor in the erection, repairing, altering or painting, any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe, unsuitable or improper scaffolding, hoists, stays, ladders or other mechanical contrivances; or who hinders or obstructs any officer detailed to inspect the same, destroys or defaces any notice posted thereon, or permits the use thereof after the same has been declared unsafe by such officer contrary to the provisions of article one of the labor law, is guilty of a misdemeanor.

Added by ch. 692 of 1893, and am'd by ch. 416 of 1897.

See ch. 715 of 1893 am'd'g ch. 517 of 1891.

Wingert v. Krakauer, 76 App. Div. 34 at 46.

§ 447b. Neglect to provide fire-escapes, etc.

A person who:

1. Being the owner, lessee, proprietor or manager of a hotel, fails to comply with the law relative to providing or keeping appliances to be used as fire-escapes; or,

2. Being the chief engineer or officer performing the duties of such in any city or village neglects to make or cause to be made the inspection required by law to be made touching fire-escapes in hotels, is guilty of a misdemeanor.

Added by ch. 551 of 1896.

§ 447c. Neglect to complete or plank floors of buildings constructed in cities.

A person, constructing a building in a city, as owner or contractor, who violates the provisions of article one of the labor law, relating to the completing or laying of floors, or the planking of such floors or tiers of beams as the work of construction progresses, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine for each offense of not less than twenty-five nor more than two hundred dollars.

Added by ch. 416 of 1897.

447d. Requiring more than the legal weight for a bushel.

Where potatoes, grains or other agricultural products are sold by the bushel, without agreement as to the weight, any person requiring a greater number of pounds for a bushel than as prescribed by section eight of the domestic commerce law, is guilty of a misdemeanor.

Added by ch. 515 of 1899.

§ 447e. Contamination of salt wells.

A person who wilfully places, introduces or causes to flow or enter into any spring, brook or body of water, which is used in the manufacture of salt, or into any salt well, or salt mine, or into any cavity or reservoir beneath the surface of the earth from which salt or brine is taken or used in the manufacture of salt, any impure or deleterious substance or thing whatsoever, which is liable to pollute the waters thereof, or the brine or salt taken or manufactured therefrom, provided that this act shall not interfere with any existing system of drainage or sewerage, is punishable by imprisonment in a penitentiary or state prison for not more than five years or by a fine of not more than two thousand dollars, or by both such fine and imprisonment.

Added by ch. 528 of 1901.

§ 447f. Bribery of labor representatives.

A person who gives or offers to give any money or other things of value to any duly appointed representative of a labor organization with intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, is guilty of a misdemeanor; and no person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Added by ch. 659 of 1904.

CRIMES AGAINST THE PUBLIC PEACE. §§ 448-450

TITLE XIII.

Of Crimes against the Public Peace.

- Sec. 448. Disturbing lawful meetings.
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§ 448. Disturbing lawful meetings.

A person who, without authority of law, willfully disturbs any assembly or meeting, not unlawful in its character, is guilty of a misdemeanor.

See §§ 274, 275, ante.

People v. Seaman, 8 Misc. 154; People v. Grim, 3 N. Y. Cr. Rep. 319. See note, Abb. N. C. 25, n.; People v. Judson, 11 Daly, 1, 82; People v. Barber, 74 Hun, 370.

§ 449. "Riot" defined.

Whenever three or more persons, having assembled for any purpose, disturb the public peace, by using force or violence to any other person, or to property, or threaten or attempt to commit such disturbance, or to do an unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they are guilty of riot.

Rodman's case, 2 C. H. Rec. 88; Scott's case, 2 C. H. Rec. 25; People v. White, 32 N. Y. 465, aff'g 55 Barb. 606; People v. Judson, 11 Daly, 1, 83; People v. Most, 128 N. Y. 113; 38 N. Y. St. Rep. 829; 8 N. Y. Cr. Rep. 279; Hill v. Supervisors, etc., 119 N. Y. 344; 29 N. Y. St. Rep. 588, aff'g 53 Hun, 194; 24 N. Y. St. Rep. 944; Adamson v. City of N. Y., 110 App. Div. 58.

§ 450. Punishment of riot.

A person guilty of riot, or of participating in a riot, either by being personally present, or by instigating, promoting, or aiding the same, is punishable as follows:

1. If the purpose of the assembly, or of the acts done or threat-

ened or intended by the persons engaged, is to resist the enforcement of a statute of this state, or of the United States, or to obstruct any public officer of this state, or of the United States, in serving or executing any process or other mandate of a court of competent jurisdiction, or in the performance of any other duty; or if the offender carries, at the time of the riot, fire-arms or any other dangerous weapon, or is disguised; by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment;

2. In any other case, if the offender directs, advises, encourages, or solicits other persons, present or participating in the riot or assembly, to acts of force or violence, by imprisonment for not more than two years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment;

3. In any case, not embraced within the foregoing subdivisions of this section, by imprisonment for not more than one year, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

See § 454, post.

§ 451. Unlawful assemblages.

Whenever three or more persons,

1. Assemble with intent to commit any unlawful act by force; or

2. Assemble, with intent to carry out any purpose, in such a manner as to disturb the public peace; or

3. Being assembled, attempt or threaten any act tending towards a breach of the peace or any injury to person or property, or any unlawful act, such an assembly is unlawful, and every person participating therein, by his presence, aid, or instigation, is guilty of a misdemeanor. But this section shall not be so construed as to prevent the peaceable assembling of persons for lawful purposes of protest or petition.

Am'd by ch. 384 of 1882.

People v. Most, 128 N. Y. 113; 7 N. Y. Cr. Rep. 380; 38 N. Y. St. Rep. 829;

8 N. Y. Cr. Rep. 281; 8 N. Y. Supp. 625; 29 N. Y. St. Rep. 99; People v. Judson, 11 Daly, 1, 82.

§ 452. Disguised and masked persons, etc.

An assemblage in public houses or other places of three or more persons disguised by having their faces painted, discolored, colored or concealed, is unlawful, and every individual so disguised, present thereat, is guilty of a misdemeanor; but nothing contained in this section shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment, or any assemblage therefor of persons masked, or as prohibiting the wearing of masks, fancy dresses, or other disguise by persons on their way to or returning from such ball or other entertainment; if, when such masquerade, fancy dress ball or entertainment is held in any of the cities of this state, permission is first obtained from the police authorities in such cities respectively for the holding or giving thereof, under such regulations as may be prescribed by such police authorities.

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§ 453. Allowing masquerades to be held in places of public resort.

A person being a proprietor, manager or keeper of a theatre, circus, public garden, public hall, or other place of public meeting, resort or amusement, for admission to which any price or payment is demanded, who permits therein any assemblage of persons masked, prohibited in this title, is guilty of a misdemeanor, punishable by imprisonment in a state prison not exceeding two years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars and not less than one thousand dollars, or by both such fine and imprisonment.

§ 454. Remaining present at place of riot, etc., after warning.

A person, remaining present at the place of an unlawful assembly or riot, after the persons assembled have been warned to disperse by a magistrate or public officer, is guilty of a misdemeanor, unless as a public officer, or at the request or command of a public officer, he is endeavoring or assisting to disperse the same, or to protect persons or property, or to arrest the offenders.

See § 106, Code Crim. Pro.

People v. Hughes, 137 N. Y. 29.

§ 455. Remaining present, at place of a meeting, originally lawful, after it has adopted an unlawful purpose.

Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to a riot, if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, or such act is committed, except public officers and persons assisting them in attempting to disperse the assembly, is guilty of a misdemeanor.

§ 456. Refusing to assist in arresting rioter.

A person, present at the place of an unlawful assembly or riot, who, being commanded by a duly authorized public officer to act or aid in suppressing the riot, or in protecting persons or property, or in arresting a person guilty of or charged with participating in the unlawful assembly or riot, neglects or refuses to obey such command, is guilty of a misdemeanor.

See § 108, Code Crim. Pro.

People v. Johnson, 22 Misc. 151.

§ 457. Combinations to resist execution of process.

A person, who enters into a combination with another to resist the execution of any legal process, or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, is guilty of a misdemeanor.

See §§ 102, 108, Code Crim. Pro.

§ 458. Prize fighting and sparring exhibitions, aiding therein, et cetera.

A person who, within this state, engages in, instigates, aids, encourages or does any act to further a contention, or fight, without weapons, between two or more persons, or a fight commonly called a ring or prize fight, either within or without the state, or who engages in a public or private sparring exhibition, with or without gloves, within the state, at which an admission fee is charged or received, either directly or indirectly, or who sends or publishes a challenge, or acceptance of a challenge for such a contention, exhibition or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention, exhibition or fight, is guilty of a misdemeanor.

Am'd by ch. 301 of 1896, and ch. 270 of 1900. In effect Sept. 1, 1900.
See § 234, supra.

People v. Johnson, 22 Misc. 150; People v. Fitzsimmons, 69 N. Y. St. Rep. 196; People v. Finucan, 80 App. Div. 407.

§ 459. What is a challenge.

Any words spoken or written, or any signs uttered or made to any person, expressing or implying, or intended to express or imply a desire, request, invitation or demand to engage in any fight, such as is mentioned in section 458, are to be deemed a challenge within the meaning of that section.

See § 236, ante.
Wood's case, 3 C. H. Rec. 139; Norton's case, 3 C. H. Rec. 90; People v. Barker, 3 Cow. 386; 20 Johns. 457.

§ 460. Betting or stakeholding on fight.

A person who bets, stakes, or wagers money or other property, upon the result of such a fight or encounter, or who holds or undertakes to hold money or other property so staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

§ 461. Fight out of state.

A person who leaves the state, with intent to elude any provision of this title, or to commit any act without the state, which is prohibited by this title, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this title, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

See §§ 185, 239, ante; § 183, Code Crim. Pro.

§ 462. Indictment.

An indictment for an offense, specified in the last section, may be tried in any county within the state.

See § 240, ante, and § 183, Code Crim. Pro.

CRIMES AGAINST THE PUBLIC PEACE. §§ 463-466

§ 463. Apprehension of persons about to fight.

A magistrate having power to issue warrants in criminal cases, to whom it is made to appear that there is reasonable ground to apprehend that an offense specified in sections 458, 460 and 461 is about to be committed within his jurisdiction, or by any person being within his jurisdiction, must issue his warrant to a sheriff or constable, or other proper officer, for the arrest of the person or persons so about to offend. Upon a person being arrested and brought before him by virtue of the warrant, he must inquire into the matter, and, if it appears that there is reasonable ground to believe that the person arrested is about to commit any offense, the magistrate must require him to give a bond to the people of the state in such sum, not exceeding one thousand dollars, as the magistrate may fix, either with or without sureties in his discretion, conditioned that such person will not, for one year thereafter, commit any such offense.

People v. Johnson, 22 Misc. 150.

§ 464. Id.

If the person arrested, as prescribed in the last section, does not furnish a bond as prescribed therein, within a time fixed by the magistrate, the latter must commit him to the county jail, there to remain until discharged by a court of record having criminal jurisdiction. A person so committed may, at any time, be discharged upon a writ of habeas corpus, upon his executing the bond required by the committing magistrate. If the bond is required to be given with one or more sureties, the surety or sureties must be approved by the officer taking the same.

§ 465. Forceable entry and detainer.

A person, guilty of using, or of procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and the manner allowed by law, is guilty of a misdemeanor.

Force is necessary element. *People v. Smith, 24 Barb. 16; People v. Field, 1 Lans. 222.*

Party in possession. *Mickle v. Edwards, 1 C. H. Rec. 119.*

Indictment. *People v. Leonard, 11 Johns. 504; Carter v. Newbold, 7 How. 166; People v. Nelson, 13 Johns. 340; People v. Field, 52 Barb. 198; 1 Lans. 222; People v. Reed, 11 Wend. 157; People v. Farrell, 28 N. Y. St. Rep. 48.*

Conviction. *People v. Rickert, 8 Cow. 226; People v. Anthony, 4 Johns. 198. See also Cain v. Flood, 88 N. Y. St. Rep. 197; Mather v. Hood, 8 Johns. 44; People v. Van Nostrand, 9 Wend. 50; People v. Carter, 29 Barb. 208.*

§ 466. Returning to take possession of lands after being removed by legal process.

A person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterwards, without authority of law, returns to settle or reside upon or take possession of such lands, is guilty of a misdemeanor.

§ 467. Unlawful intrusion, etc.

A person who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor.

See § 640, subd. 9, post.

People v. Bates, 79 Hun, 587; *O'Donnell v. McIntyre*, 16 Abb. N. C. 84, n. 87; *People v. Stevens*, 109 N. Y. 159; 14 N. Y. St. Rep. 808; *Hewitt v. Newburger*, 141 N. Y. 542.

§ 468. Discharging fire-arms.

A person who, otherwise than in self defense, or in the discharge of official duty,

1. Willfully discharges any species of fire-arms, air-gun or other weapon, or throws any other deadly missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues; or

2. Intentionally, without malice, points or aims any fire-arm at or toward any other person; or

3. Discharges, without injury to any other person, fire-arms, while intentionally, without malice, aimed at or toward any person; or

4. Maims or injures any other person by the discharge of any fire-arm pointed or aimed intentionally, but without malice, at any such person,

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1893.

§ 468a. Criminal anarchy defined.

Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.

Added by ch. 371 of 1902.

Von Gerichten v. Seitz, 94 App. Div. 130.

§ 468b. Advocacy of criminal anarchy.

Any person who :

1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or

2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or,

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3. Openly, willfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or

4. Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such doctrine; is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Added by ch. 371 of 1902.

§ 468c. Liability of editors and others.

Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

Added by ch. 371 of 1902.

§ 468d. Assemblages of anarchists.

Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in section four hundred and sixty-eight-a of this title, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation, is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of more than five thousand dollars, or both.

Added by ch. 371 of 1902.

§ 468e. Permitting premises to be used for assemblages of anarchists.

The owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, who wilfully and knowingly permits therein any assemblage of persons prohibited by section four hundred and sixty-eight of this title, or who, after notification that the premises are so used permits such use to be continued, is guilty of a misdemeanor, and punishable by imprisonment for not more than two years, or by a fine of not more than two thousand dollars, or both.

Added by ch. 371 of 1902.

§ 469. Witnesses' privilege.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this title, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

See § 712, post.

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CRIMES AGAINST PROPERTY OF THE STATE. § 470

TITLE XIV.

Of Crimes against the Revenue and Property of the State.

- Sec. 470. Misappropriation, etc., and falsification of accounts by public officers.
471. Other violations of law.
 472. Misappropriation, etc., by county treasurer.
 473. Officer authorized to make any sale, lease or contract, becoming interested under it.
 474. County clerks omitting to publish statement required by law.
 475. Obstructing officer in collecting revenue.
 476. Delivering false bill of lading to canal collector.
 477. Weighmaster making false entry of weight of canal boat.
 478. Canal officer concealing frauds upon the revenue.
 479. Willful injuries to the canals.
 480. Drawing off water from canals.
 481. Canal officer accepting bribe to allow water to be drawn off from canals.
 482. Fraudulent appropriation of lost treasure or waived property.
 483. Injuries to the salt works.
 484. Seizing military stores belonging to the state.
 485. Making false statement in reference to taxes.
 - 485a. School district trustee not to draw draft on supervisor in certain cases.

§ 470. Misappropriation, etc., and falsification of accounts by public officers.

A public officer, or a deputy, or clerk of any such officer, and any other person receiving money on behalf of, or for account of the people of this state, or of any department of the government of this state, or of any bureau or fund created by law, and in which the people of this state are directly or indirectly interested, or for or on account of any city, county, village or town, who

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or,
2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him, or
3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or
4. Willfully omits or refuses to pay over to the people of this state or their officer or agent authorized by law to receive the same, or to such city, village, county or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer, when it is his duty imposed by law to pay over, or account for, the same;

Is guilty of felony.

See § 114, subd. 2; § 515, Penal Code.

People v. Church, 1 How. (N. S.) 366; 3 N. Y. Cr. Rep. 57; Bork v. People, 91 N. Y. 5; People v. Lyon, 33 Hun, 628; 2 N. Y. Cr. Rep. 484, aff'd 1 N. Y. Cr. Rep. 400, rev'd, 99 N. Y. 210; 3 N. Y. Cr. Rep. 161.

§ 471. Other violations of law.

An officer or other person mentioned in the last section who willfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years, or both.

See § 155, ante.

§ 472. Misappropriation, etc., by county treasurer.

A county treasurer, who willfully misappropriates any money, funds or securities, received by or deposited with him as such treasurer, or who is guilty of any other malfeasance or willful neglect of duty in his office, is punishable by a fine not less than five hundred dollars nor more than ten thousand dollars, or by imprisonment in a state prison not less than one year or more than five years, or by both such fine and imprisonment.

§ 473. Officer authorized to make any sale, lease or contract, becoming interested under it.

A public officer or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the superintendent of public instruction, is guilty of a misdemeanor.

Am'd by ch. 493 of 1888, and ch. 220 of 1890.

Banigan v. Village of Nyack, 25 App. Div. 151; Howell v. Barker, 4 Johns. Ch. 118; Beebe v. Board, 64 Hun, 380; 46 N. Y. St. Rep. 223; 19 N. Y. Sup. 630.

What is not within. People ex rel. Spaulding v. Supervisors, 66 App. Div. 117.

§ 474. County clerks omitting to publish statement required by law.

A county clerk who willfully omits to publish any statement required by law, within the time prescribed, is guilty of a misdemeanor, punishable by a fine of one hundred dollars, or imprisonment for six months, or both.

§ 475. Obstructing officer in collecting revenue.

A person who willfully obstructs or hinders a public officer from collecting any revenue, taxes or other sum of money in which, or in any part of which the people of this state are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

§ 476. Delivering false bill of lading to canal collector.

A person whose duty it is to deliver to any collector of tolls upon any of the canals belonging to this state, a bill of lading of any property transported upon such canal, who delivers a false bill of lading as true, or makes or signs a false bill of lading, intending it to be delivered as true, knowing such bill to be false,

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is punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding three times the value of the property omitted in such bill, or both.

Davis v. Bemis, 40 N. Y. 458.

§ 477. Weighmaster making false entry of weight of canal boat.

A weighmaster upon any of the canals belonging to this state, and a clerk of such weighmaster, who makes a false entry of the weight of any boat, or cargo of any boat, navigating such canal, or who makes a false certificate of the light weight of any boat, knowing such entry or certificate to be false, is guilty of a misdemeanor.

§ 478. Canal officer concealing frauds upon the revenue.

A public officer or agent employed by the people of this state in relation to the canals belonging to this state, who knows, or has good reason to believe that any fraud upon the revenues of the canals has been committed or attempted, and who omits to disclose the same, and enforce the penalties therefor, if within his power, is guilty of a misdemeanor.

§ 479. Willful injuries to the canals.

A person who, without authority of law, willfully inflicts an injury upon any of the canals belonging to this state, or disturbs or injures any of the boats, locks, bridges, buildings, machinery or other works or erections connected with any such canal, and in which the people of this state have an interest, is guilty of felony.

See § 56, subd. 19, Code Crim. Pro.

Sipple v. State, 90 N. Y. 289; 16 Abb. N. C. 484; *Smith v. Clark*, 3 Lans. 208.

§ 480. Drawing off water from canals.

A person who draws water from any canal in this state, or from a feeder or reservoir of any canal, during the season of navigation of the canal, and to the detriment or injury of the navigation thereof, without authority of law, is punishable by imprisonment in a county jail not less than one year, and by a fine not less than one thousand dollars.

Robinson v. Chamberlain, 84 N. Y. 400; *Lynch v. Stone*, 4 Den. 856; *Sipple v. State*, 90 N. Y. 289; 16 Abb. N. C. 484; *Verrick v. Smith*, 5 Paige, 136; *Ex parte Miller*, 2 Hill, 418.

§ 481. Canal officer accepting bribe to allow water to be drawn off from canals.

A public officer or agent employed by the people of this state in relation to the canals belonging to the state, or a contractor for canal repairs, or person having charge of any canal, or any part thereof, or of any lock, waste weir, feeder or other work belonging thereto, or being employed thereon, who asks, or accepts or promises to accept any bribe as an inducement to permit water to be drawn from a canal, feeder or reservoir in violation of the last

section; and a person who gives, or offers or promises to give to any officer or person above mentioned, any bribe as an inducement to him to permit water to be drawn from any canal, feeder or reservoir in violation of this section, is guilty of a misdemeanor.

§ 482. Fraudulent appropriation of lost treasure or waived property.

A person who fraudulently conceals or appropriates to his own use any lost treasure or any waived property belonging to this state by virtue of its sovereignty, is guilty of a misdemeanor.

§ 483. Injuries to the salt works.

A person who willfully burns, destroys, or injures any salt manufactory connected with the Onondaga salt springs, or any building appurtenant to such manufactory or any part of such manufactory, or any of the buildings, reservoirs, pumps, conductors or water conduits, belonging to this state, used in the raising of salt water for the manufacture of salt, without authority of law, is punishable by imprisonment in a state prison not exceeding five years.

§ 484. Seizing military stores belonging to the state.

- A person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this state; and a person who enters any such place with intent so to do, is punishable by imprisonment in a state prison not exceeding ten years.

§ 485. Making false statement in reference to taxes.

A person, who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully makes, as to any material matter, any statement which he knows to be false, is guilty of a misdemeanor.

§ 485a. School district trustee not to draw draft on supervisor in certain cases.

A school district trustee who issues an order or draws a draft on supervisor or collector for any money, unless there is at the time sufficient money in the hands of such supervisor or collector belonging to the district to meet such order or draft, is guilty of a misdemeanor.

Added by ch. 692 of 1898.

TITLE XV.

Of Crimes against Property.

- Chap.**
- I. Arson.
 - II. Burglary and housebreaking.
 - III. Forgery and counterfeiting.
 - IV. Larceny, including embezzlement.
 - V. Extortion.
 - VI. False personation and cheats.
 - VII. Fraudulently fitting out and destroying ships and vessels.
 - VIII. Misconduct and frauds in relation to insurance corporations, associations and societies.
 - IX. False weights and measures.
 - X. Fraudulent insolvencies by individuals.
 - XI. Fraudulent insolvencies by corporations, and other frauds in their management.
 - XII. Frauds in the sale of passage tickets.
 - XIII. Fraudulent issue of documents of title to merchandise.
 - XIV. Malicious mischief and other injuries to property.

CHAPTER I.

Arson.

- Sec.**
- 486. Arson in first degree defined.
 - 487. Id.; in second degree.
 - 488. Id.; in third degree.
 - 489. Arson, how punished.
 - 490. Intent to destroy building requisite.
 - 491. Contiguous buildings.
 - 492. "Night time" defined.
 - 493. "Building" defined.
 - 494. "Inhabited building," defined.
 - 495. Ownership of building.

§ 486. Arson in first degree defined.

A person who willfully burns, or sets on fire, in the night time, either

1. A dwelling-house in which there is, at the time, a human being; or
2. A car, vessel, or other vehicle, or a structure or a building other than a dwelling-house, wherein, to the knowledge of the offender, there is, at the time, a human being;

Is guilty of arson in the first degree.

See §§ 502, 637, Penal Code.

People v. Fanshawe, 137 N. Y. 74; 47 N. Y. St. Rep. 335; 65 Hun, 83; People v. Orcutt, 1 Park. 252; People v. Butler, 16 Johns. 203; Carn-cross v. People, 17 Week. Dig. 384; 4 N. Y. Cr. Rep. 518; People v. Bush, 4 Hill, 133; Levy v. People, 80 N. Y. 327; 19 Hun, 388; Woodford v. People, 62 N. Y. 117; 3 Hun, 310; 5 T. & C. 539; People v. McGrath, 4 N. Y. St. Rep. 629; 5 N. Y. Cr. Rep. 4; Hennessy v. People, 21 How. Pr. 238; People v. Smith, 3 How. Pr. 228; Mackesey v. People, 6 Park. 114; Shepard v. People, 19 N. Y. 537; People v. Cotteral, 18 Johns. 115; McDermott v. People, 5 Park. 102; People v. Henderson, 1 Par. 560; People v. Bradner, 107 N. Y. 1; 10 N. Y. St. Rep. 667; People v. Wagner, 180 N. Y. 58, aff'd 84 App. Div. 637.

Sufficiency of deposition. McKelvy v. Marsh, 63 App. Div. 396.
Scope of cross-examination. People v. Milks, 70 App. Div. 438.

§ 487. Id.; in second degree.

A person who,

1. Commits an act of burning in the day time, which, if committed in the night time, would be arson in the first degree; or
2. Willfully burns, or sets on fire, in the night time, a dwelling-house wherein at the time there is no human being; or
3. Willfully burns, or sets on fire, in the night time, a building not inhabited, but adjoining or within the curtilage of an inhabited building, in which there is, at the time, a human being, so that the inhabited building is endangered, even though it is not in fact injured by the burning; or
4. Willfully burns, or sets on fire, in the night time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time;

Is guilty of arson in the second degree.

People v. Fanshawe, 65 Hun, 83; People v. Durkin, 5 Park. 243; People v. McGrath, 4 N. Y. St. Rep. 629; 5 N. Y. Cr. Rep. 4; Peverely v. People, 3 Park. 59; People v. Smith, 37 App. Div. 283; People v. Cotteral, 18 Johns. 115.

§ 488. Id.; in third degree.

A person who willfully burns, or sets on fire, either

1. A vessel, car, or other vehicle, or a building, structure, or other erection, which is at the time insured against loss or damage by fire, with intent to prejudice the insurer thereof; or
2. A vessel, car, or other vehicle, or a building, structure, or other erection, under circumstances not amounting to arson in the first or second degree;

Is guilty of arson in the third degree.

See cases under § 486.

Greenfield v. People, 85 N. Y. 85; People v. Fanshawe, 187 N. Y. 74; 65 Hun, 83; 47 N. Y. St. Rep. 335; Freund v. People, 5 Park. 198; People v. Henderson, 1 Park. 560; People v. O'Neill, 112 N. Y. 355; 6 N. Y. Cr. Rep. 274; 20 N. Y. St. Rep. 754, aff'g 49 Hun, 422; 4 N. Y. Supp. 119; 17 N. Y. St. Rep. 956; People v. Smith, 37 App. Div. 283; Dedieu v. People, 22 N. Y. 178, rev'g 4 Park. 593, overruling Hennessey v. People, 21 How. 239; Carncross v. People, 1 N. Y. Cr. Rep. 518; McGary v. People, 45 N. Y. 153; Sheppard v. People, 19 N. Y. 537; People v. Newton, 3 N. Y. Cr. Rep. 406.
Proof. People v. Butler, 62 App. Div. 508; People v. Brown, 110 App. Div. 490.

§ 489. Arson, how punished.

Arson is punishable as follows:

1. In the first degree, by imprisonment for a term not exceeding forty years.
2. In the second degree, by imprisonment for a term not exceeding twenty-five years.
3. In the third degree, by imprisonment for a term not exceeding fifteen years.

Am'd by ch. 662 of 1892, ch. 902 of 1895, ch. 540 of 1897.

490. Intent to destroy building requisite.

The burning of a building under circumstances which shows beyond a reasonable doubt that there was no intent to destroy it, is not arson.

People v. Fanshawe, 137 N. Y. 74, aff'd 65 Hun, 83; 8 N. Y. Cr. Rep. 343; 47 N. Y. St. Rep. 340; 19 N. Y. Supp. 868.

491. Contiguous buildings.

Where an appurtenance to a building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of the one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing provisions, against any person actually participating in the original setting on fire, as of the moment when the fire from the one communicates to and sets on fire the other.

Voodford v. People, 62 N. Y. 117, aff'd 3 Hun, 310; Arkell v. Com. Ins. Co., 69 N. Y. 193; Hennessey v. People, 22 N. Y. 178, rev'd 21 How. 239; People v. Nolan, 115 N. Y. 660.

492. "Night time" defined.

The words "night time," as used in this chapter, include the period between sunset and sunrise, and every building or structure, which shall have been usually occupied by persons lodging therein at night, is a dwelling-house within the meaning of this chapter.

493. "Building" defined.

Any house, vessel, or other structure, capable of affording shelter for human beings, or appurtenant to, or connected with a structure so adapted, is a "building" within the meaning of this chapter.

See § 504, post.

House v. Catskill & N. Y. Steamboat Co., 59 Hun, 82; 35 N. Y. St. Rep. 493; 18 N. Y. Supp. 128.

494. "Inhabited building," defined.

A building is deemed an "inhabited building" within the meaning of this chapter, any part of which has usually been occupied by a person lodging therein at night.

People v. Cotteral, 18 Johns. 115; People v. Orcutt, 1 Park. 252; Levy v. People, 19 Hun, 386.

495. Ownership of building.

To constitute arson it is not necessary that another person than the defendant should have had ownership in the building set on fire.

People v. Smith, 8 How. 226; Shepherd v. People, 19 N. Y. 537; People v. Van Blarcom, 2 Johns. 105.

CHAPTER II.

Burglary.

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 498. Id.; in third degree.
 499. "Break" defined.
 500. "Night time" defined.
 501. "Enter" defined.
 502. "Dwelling-house" defined.
 503. Dwelling-houses, etc., when deemed separate.
 504. "Building" defined.
 505. Unlawfully entering building.
 506. Burglar punishable separately for crime in building.
 507. Burglary, how punished.
 508. Possessing burglar's instruments, etc.

§ 496. Burglary in first degree defined.

A person, who, with intent to commit some crime therein, breaks and enters, in the night time, the dwelling-house of another, in which there is at the time a human being,

1. Being armed with a dangerous weapon; or
2. Arming himself therein with such a weapon; or
3. Being assisted by a confederate actually present; or
4. Who, while engaged in the night time in effecting such entrance, or in committing any crime in such a building, or in escaping therefrom, assaults any person;

Is guilty of burglary in the first degree.

What constitutes breaking. *People v. Gartland*, 30 App. Div. 585; *People v. Bush*, 3 Park. Cr. Rep. 557; *People v. Block*, 39 N. Y. St. Rep. 477; 15 N. Y. Supp. 229; *People v. Meegan*, 104 N. Y. 529; *People v. Moran*, 54 Hun, 279.

Indictment. *People v. Bosworth*, 45 N. Y. St. Rep. 512; *Mason v. People*, 26 N. Y. 200; *People v. Fellinger*, 24 How. Pr. 341; 15 Abb. 128; *People v. Richards*, 44 Hun, 283; 5 N. Y. Cr. Rep. 355.

Charge. *People v. Meegan*, 104 N. Y. 529.

Evidence. *People v. Bosworth*, 45 N. Y. St. Rep. 512; *Foster v. People*, 63 N. Y. 619, aff'g 3 Hun, 6; *Rodgers v. People*, 86 N. Y. 360.

See *Sullivan v. People*, 27 Hun, 35; *Quinn v. People*, 71 N. Y. 561, aff'g 11 Hun, 336; *People ex rel. Riley v. Bell*, 24 N. Y. St. Rep. 301; 3 N. Y. Supp. 813.

§ 497. Id.; in second degree.

A person, who, with intent to commit some crime therein, breaks and enters the dwelling-house of another in which there is a human being, under circumstances not amounting to burglary in the first degree, is guilty of burglary in the second degree.

People v. Bosworth, 64 Hun, 79; 45 N. Y. St. Rep. 573; 19 N. Y. Supp. 116.

§ 498. Id.; in third degree.

A person who either

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or

2. Being in any building, commits a crime therein and breaks out of the same;

Is guilty of burglary in the third degree.

Is a felony. *People v. Park*, 41 N. Y. 21, aff'd 1 Lans. 203.

Definition of "building." *People v. Richards*, 108 N. Y. 137; 13 N. Y. St.

Rep. 515, rev'g 44 Hun, 278; 7 N. Y. St. Rep. 656; 5 N. Y. Cr. Rep. 355.

Intent. *People v. Richards*, *supra*; *People v. Marx*, 4 Park. 154.

Principal. *People v. Bosworth*, 64 Hun, 74; 19 N. Y. Supp. 116; 45 N. Y. St. Rep. 515.

See also *People v. Haight*, 54 Hun, 9; 26 N. Y. St. Rep. 33; *People v. Hagan*, 37 N. Y. St. Rep. 661; 14 N. Y. Supp. 233.

Evidence. Comments of court. *People v. Dixon*, 118 App. Div. 598.

§ 499. "Break," defined.

The word "break," as used in this chapter, means and includes

1. Breaking or violently detaching any part, internal or external, of a building; or

2. Opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle, or other thing, used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another; or

3. Obtaining an entrance into such a building or apartment, by any threat or artifice used for that purpose, or by collusion with any person therein; or

4. Entering such a building or apartment by or through any pipe, chimney, or other opening, or by excavating, digging, or breaking through or under the building, or the walls or foundation thereof.

Latched door. *People v. Bush*, 3 Park. 552.

Unlocked door. *Frickner v. People*, 6 Hun, 657.

What is outer door. *McCourt v. People*, 64 N. Y. 583.

Sufficient to warrant finding of breaking in. *Foster v. People*, 63 N. Y. 619, aff'd, 3 Hun, 6.

See also *People v. Boujet*, 2 Park. 11; *People v. Richards*, 108 N. Y. 137;

13 N. Y. St. Rep. 515, rev'g 44 Hun, 278; 7 N. Y. St. Rep. 656; 5 N. Y.

Cr. Rep. 355; *People v. Arnold*, 6 Park. 638; *People v. Lawton*, 58

Barb. 126; *People v. Myers*, 2 Hun, 6; *People v. Gartland*, 30 App. Div.

535; *People ex rel. Reilly v. Bell*, 24 N. Y. St. Rep. 301; 3 N. Y.

Supp. 818.

§ 500. "Night time," defined.

Repealed by ch. 677 of 1892.

§ 501. "Enter," defined.

The word "enter," as used in this chapter, includes the entrance of the offender into such building or apartment, or the insertion therein of any part of his body or of any instrument or weapon held in his hand, and used, or intended to be used, to threaten or intimidate the inmates, or to detach or remove property.

Sullivan v. People, 27 Hun, 35; *People v. Bush*, 3 Park. 552; *People v. Fellinger*, 24 How. Pr. 841; *People v. Richards*, 108 N. Y. 137; 13 N. Y. St. Rep. 515, rev'g 44 Hun, 278; 7 N. Y. St. Rep. 656; 5 N. Y. Cr. Rep. 355.

§ 502. "Dwelling-house," defined.

A building, any part of which is usually occupied by a person lodging therein at night, is, for the purposes of this chapter, deemed a dwelling-house.

Quinn v. People, 71 N. Y. 561, aff'g 11 Hun, 338; *People v. Parker*, 4 Johns. 424; *Rodgers v. People*, 86 N. Y. 380; *People v. Snyder*, 2 Park. 33; *People v. McCloskey*, 5 Park. 57.

§ 503. Dwelling-houses, etc., when deemed separate.

If a building is so constructed as to consist of two or more parts, intended to be occupied by different tenants usually lodging therein at night, each part is deemed the separate dwelling-house of a tenant occupying the same. If a building is so constructed as to consist of two or more parts occupied by different tenants separately for any purpose, each part or apartment is considered a separate building within the meaning of this chapter.

Rodgers v. People, 86 N. Y. 380; *People v. Bush*, 3 Park. 552; *Mason v. People*, 28 N. Y. 200; *People v. Calvert*, 51 N. Y. St. Rep. 187; 22 N. Y. Supp. 221; *Quinn v. People*, 71 N. Y. 561, aff'g 11 Hun, 338.

§ 504. "Building," defined.

The term "building," as used in this chapter, includes a railway car, vessel, booth, tent, shop, enclosed ginseng garden, or other erection or inclosure.

Am'd by ch. 332 of 1908.

Rouse v. Catskill & N. Y. S. Co., 59 Hun, 82; 35 N. Y. St. Rep. 496; *People v. Haight*, 54 Hun, 9; *People v. Hagan*, 37 N. Y. St. Rep. 661; *People v. Richards*, 108 N. Y. 137; 18 N. Y. St. Rep. 515, rev'g 44 Hun, 278; 7 N. Y. St. Rep. 656; 5 N. Y. Cr. Rep. 355.

§ 505. Unlawfully entering building.

A person who, under circumstances or in a manner not amounting to a burglary, enters a building, or any part thereof, with intent to commit a felony or a larceny, or any malicious mischief, is guilty of a misdemeanor.

No forcible entry required. *People v. Corcoran*, 34 Misc. 332. *People v. Meegan*, 104 N. Y. 531; 5 N. Y. St. Rep. 743; 5 N. Y. Cr. Rep. 523.

§ 506. Burglar punishable separately for crime in building.

A person who, having entered a building under such circumstances as to constitute burglary in any degree, commits any crime therein, is punishable therefor, as well as for the burglary; and may be prosecuted for each crime, separately, or in the same indictment.

People v. Wilson, 151 N. Y. 407; *People v. Marks*, 4 Park. 153; *People v. Richards*, 108 N. Y. 137; 18 N. Y. St. Rep. 515, rev'g 44 Hun, 278; 7 N. Y. St. Rep. 656; 5 N. Y. Cr. Rep. 355.

§ 507. Burglary, how punished.

Burglary is punishable by imprisonment in a state prison, as follows:

1. Burglary in the first degree, for not less than ten years.

2. Burglary in the second degree, for a term not exceeding ten years.

3. Burglary in the third degree, for a term not exceeding five years.

Am'd by ch. 662 of 1892.

People v. Harrington, 3 N. Y. Cr. Rep. 141; 15 Abb. N. C. 163; 1 How. (N. S.) 37.

§ 508. Possessing burglars' instruments, etc.

A person who makes or mends, or causes to be made or mended, or has in his possession in the day or night time, any engine, machine, tool, false key, pick-lock, bit, nippers, or implements adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same are intended to be so used, shall be guilty of a misdemeanor, and if he has been previously convicted of any crime he is guilty of a felony.

Am'd by ch. 369 of 1884.

People v. Thompson, 33 App. Div. 179; People v. Lyons, 18 Misc. 339; People v. Emerson, 6 N. Y. Cr. Rep. 157; 5 N. Y. Supp. 374; 20 N. Y. St. Rep. 18; People v. Morgan, 13 N. Y. Supp. 448; 35 N. Y. St. Rep. 643.

Previous conviction, failure to prove. People v. Reilly, 49 App. Div. 218.

CHAPTER III.

Forgery.

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§ 509. Forgery in first degree defined.

A person is guilty of forgery in the first degree who with intent to defraud, forges,

1. A will or codicil of real or personal property, or the attestation thereof, or a deed or other instrument, being or purporting to be the act of another, by which any right or interest in property is or purports to be transferred, conveyed, or in any way charged or affected; or

2. A certificate of the acknowledgment or proof of a will, codicil, deed, or other instrument, which by law may be recorded or given in evidence when duly proved or acknowledged, made or purporting to have been made by a court or officer duly authorized to make such a certificate; or

3. A certificate, bond, paper, writing, or other public security, issued or purporting to have been issued by or under the authority of this state, or of the United States, or of any other state or territory of the United States, or of any foreign government, country or state, or by any officer thereof in his official capacity, by which the payment of money is promised absolutely or upon any contingency, or the receipt of any money or property is acknowledged, or being or purporting to be evidence of any debt or liability, either absolute or contingent, issued or purporting to have been issued by lawful authority; or

4. An indorsement or other instrument, transferring or purporting to transfer the right or interest of any holder of such a certificate, obligation, public security, evidence of debt or liability, or of any person entitled to such right or interest; or

5. A certificate of stock, bond or other writing, bank note, bill of exchange, draft, check, certificate of deposit, or other obligation or evidence of debt, issued or purporting to be issued by any

bank, banking association or body corporate existing under the laws of this state, or of the United States, or of any other state, government or country, declaring or purporting to declare any right, title or interest of any person in any portion of the capital stock, or property of such a body corporate, or promising or purporting to promise or agrees to the payment of money, or the performance of any act, duty, or obligation; or

6. An indorsement or other writing, transferring or purporting to transfer the right or interest of any holder of such a certificate, bond, or writing obligatory, or of any person entitled to such right or interest.

See § 718, subd. 5, post.

Definition of. *Mann v. People*, 75 N. Y. 484, aff'd 15 Hun, 155; *Heilbroner's case*, 1 Park, 429.

What is not forgery. *Fadner v. People*, 33 Hun, 240; 2 N. Y. Cr. Rep. 558; *Cunningham v. People*, 4 Hun, 457; *People v. Dewey*, 35 Hun, 310; *People v. Shall*, 9 Cow. 778; *People v. Harrison*, 8 Barb. 560.

Indictment. *People v. Savage*, 5 N. Y. Cr. Rep. 541; *Paige v. People*, 3 Abb. Dec. 439; *Vincent v. People*, 5 Park, 88.

Signing one's own proper name. *People v. Peacock*, 6 Cow. 72.

Name of a fictitious person. *Brown v. People*, 72 N. Y. 571, aff'd 8 Hun, 562; *People v. Jones*, 27 Week. Dig. 222.

Evidence. *People v. Stearns*, 21 Wend. 409; *Kerrains v. People*, 60 N. Y. 221; *People v. Everhardt*, 104 N. Y. 591; 6 N. Y. Cr. Rep. 232; 5 N. Y. St. Rep. 783; *People v. De Kroyft*, 49 Hun, 71; 17 N. Y. St. Rep. 208.

Deed. *Bough v. People*, 1 Week. Dig. 182; *People v. Harrison*, 8 Barb. 560.

Instrument. *Paige v. People*, 3 Abb. Dec. 439; 6 Park, 683; *People v. Dewey*, 35 Hun, 310; *People v. Flanders*, 18 Johns. 163.

Bond. *People v. Brile*, 105 N. Y. 618, aff'd 43 Hun, 317.

Note. *People v. D'Argencour*, 95 N. Y. 628; 2 N. Y. Cr. Rep. 267; 19 Week. Dig. 139.

See also *Fulton v. Met. Life Ins. Co.*, 47 N. Y. St. Rep. 113; *Bendit v. Carr*, 3 N. Y. St. Rep. 264; *People v. Shulman*, 80 N. Y. 373.

Subd. 2. Instrument. *People v. Filkin*, 83 App. Div. 589.

§ 510. Id.; false certificate to certain instruments.

An officer authorized to take the proof or acknowledgment of an instrument which by law may be recorded, who willfully certifies falsely, that the execution of such an instrument was acknowledged by any party thereto, or that the execution of any such instrument was proved, is guilty of forgery in the first degree.

Marden v. Dorothy, 180 N. Y. 55; *People v. Hayes*, 70 Hun, 120; 54 N. Y. St. Rep. 180; *Albany Co. Sav. Bank v. McCarty*, 149 N. Y. 82.

§ 511. Id.; in second degree.

A person is guilty of forgery in the second degree who, with intent to defraud,

1. Forges the great or privy seal of this state, the seal of any court of record, or of any public office or officer authorized by law, or of any body corporate created by or existing under the laws of this state, or of the United States, or of any other state or any territory of the United States, or of any other state, government, or country, or any impression of such a seal or any gold or silver coin, whether of the United States, or of any foreign state, government or country; or

2. Forges a record of a will, conveyance, or instrument of any kind, the record of which is by the law of this state made evidence, or of any judgment, order, or decree of any court or officer, or a certified or authenticated copy thereof; or

A judgment roll, judgment, order or decree of any court or officer, or an enrollment thereof, or a certified or authenticated copy thereof, or any document or writing purporting to be such judgment, order, decree, enrollment, or copy; or

An entry made in any book of record or accounts, kept by or in the office of any officer of this state, or of any village, city, town, or county of the state, by which any demand, claim, obligation, or interest, in favor of or against the people of the state, or any city, village, town or county, or any officer thereof, is or purports to be created, increased, diminished, discharged, or in any manner affected; or an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation, whereby any pecuniary obligation, claim, or credit is or purports to be created, increased, diminished, discharged, or in any manner affected; or

An instrument, document, or writing, being or purporting to be, a process or mandate issued by a competent court, magistrate, or officer of the state, or the return of an officer, court or tribunal, to such a process or mandate; or a bond, recognizance, undertaking, pleading, or proceeding, filed or entered in any court of the state, or a certificate, order or allowance by a competent court, or officer, or a license or authority granted pursuant to any statute of the state or a certificate, document, instrument, or writing, made evidence by any law or statute; or

An instrument or writing, being or purporting to be the act of another, by which a pecuniary demand or obligation is or purports to be or to have been created, increased, discharged, or diminished, or in any manner affected, or by which any rights or property whatever are or purport to be or to have been created, transferred, conveyed, discharged, increased, or diminished, or in any manner affected, the punishment for forging, altering, or counterfeiting which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting, any person may be bound, affected or in any way injured in his person or property; or

3. Makes or engraves a plate in the form or similitude of a promissory note, bill of exchange, bank note, draft, cheque, certificate of deposit, or other evidence of debt, issued by a banker, or by any banking corporation or association, incorporated or carrying on business under the laws of the state, or of the United States, or of any other state or territory of the United States, or of any foreign government, or country, without the authority of such banker, or banking corporation or association; or

Without like authority, has in his possession or custody such a plate, with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression to be uttered; or

Without like authority, has in his possession or custody any impression taken from such a plate, with intent to have the same filled up and completed for the purpose of being uttered; or

Makes or engraves, or causes to be made or engraved, upon any plate, any figures or words, with intent that the same may be used for the purpose of falsely altering any evidence of debt hereinbefore mentioned.

Evidence. People v. Ryland, 28 Hun, 568; People v. Courtney, 28 Hun, 589; People v. Dewey, 35 Hun, 208; People v. Elmore, 3 N. Y. Cr. Rep. 264; People v. Bassford, 3 N. Y. Cr. Rep. 219; People v. Jones, 106 N. Y. 523; People v. Mershon, 43 App. Div. 541; 60 N. Y. Supp. 115.

Intent. People v. Wiman, 148 N. Y. 29; 88 Hun, 320; 68 N. Y. St. Rep. 442; 32 N. Y. Supp. 1037; Fox v. People, 22 Alb. L. J. 118; Matter of Van Orden, 32 Misc. 215.

Indictment. People v. D'Argencour, 95 N. Y. 624, affg. 32 Hun, 178; People v. Martin, 2 N. Y. Cr. Rep. 51; People v. Sebring, 14 Misc. 31; 38 N. Y. Supp. 237; 68 N. Y. St. Rep. 612; People v. Altman, 147 N. Y. 473; 70 N. Y. St. Rep. 66, rev'd 86 Hun, 568; 38 N. Y. 905; 67 N. Y. St. Rep. 684; People v. Drayton, 41 App. Div. 42; People v. Adler, 140 N. Y. 331.

Principal. People v. Tower, 185 N. Y. 457; 48 N. Y. St. Rep. 438.

Charge of court. People v. Martin, 36 Hun, 462; People v. Loew, 46 N. Y. St. Rep. 702; 8 N. Y. Cr. Rep. 370; 19 N. Y. Supp. 360.

Forgery in second degree as defined in § 511 is distinct from forgery in second degree under § 521.

Forging an usurious note is a crime. People v. Wheeler, 47 Hun, 484.

Filling out signed checks with fraudulent intent is not forgery. People v. Reinitz, 7 N. Y. Cr. Rep. 71; 6 N. Y. Supp. 672; see People v. Dickie, 62 Hun, 40; 42 N. Y. St. Rep. 888; 17 N. Y. Supp. 51.

An instrument void on its face. People v. Martin, 36 Hun, 462; Fadner v. People, 33 Hun, 240; People v. Brile, 43 Hun, 317; People v. Hall, 9 Cow. 778; People v. Harrison, 8 Barb. 580; Graves v. Am. Ex. Bank, 17 N. Y. 206.

Ste People v. Underhill, 142 N. Y. 88; 58 N. Y. St. Rep. 440, rev'd 75 Hun, 329; 58 N. Y. St. Rep. 220; 28 N. Y. Supp. 1030; People v. Wiman, 9 Misc. Rep. 441; 61 N. Y. St. Rep. 65; 29 N. Y. Supp. 1034; People v. Henries, 31 N. Y. St. Rep. 720; 9 N. Y. Supp. 862; People v. Fitch, 1 Wend. 198; People v. Cady, 6 Hill, 490; People v. Flanders, 18 Johns. 164. Accomplices. People v. Ryland, 28 Hun, 568; People v. Courtney, 28 Hun, 589; People v. Bassford, 3 N. Y. Cr. Rep. 219; People v. Elliot, 106 N. Y. 288; People v. Everhardt, 104 N. Y. 591; People v. Peck, 4 N. Y. Cr. Rep. 148.

Sibd. 2. Martine's case, 6 G. H. Dec. 27; People v. Shaw, 5 Johns. 236; Harris v. People, 9 Barb. 664; People v. Finch, 5 Johns. 237; People v. Graham, 6 Park. 135; People v. Rathbone, 21 Wend. 529; Fadner v. People, 33 Hun, 240; People v. Gelula, 116 App. Div. 912; People v. Migney, 118 App. Div. 652.

Sibd. 3. People v. Osmer, 4 Park. 442; People v. Wheeler, 47 Hun, 484; People v. Clement, 26 N. Y. 194; Parmelee v. People, 8 Hun, 623; Miller v. People, 52 N. Y. 304; People v. Mann, 75 N. Y. 484.

§ 512. Qualification of last section.

A plate, specified in the last section, is in the form and similitude of the genuine instrument imitated, if the finished parts of the engraving thereupon resemble and conform to similar parts of the genuine instruments.

People v. Osmer, 4 Park. 242; 1 Sheld. 583; People v. D'Argencour, 95 N. Y. 629; 2 N. Y. Cr. Rep. 267; 19 Week. Dig. 139.

§ 513. Other cases of forgery in second degree.

An instrument partly written and partly printed, or wholly printed with a written signature thereto, and any signature or

writing purporting to be a signature of, or intended to bind an individual, a partnership, a corporation or association or an officer thereof, is a written instrument or a writing, within the provisions of this chapter.

People v. Drayton, 41 App. Div. 41; People v. Rhoner, 4 Park. 166; People v. Underhill, 142 N. Y. 44, rev'd 75 Hun 331.
Scienter. People v. Weaver, 177 N. Y. 434.

§ 514. Other cases of forgery in third degree.

A person who either,

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or,

2. Who, with intent to injure or defraud, shall falsely make, alter, forge or counterfeit, or shall cause, aid, abet, assist or otherwise connive at, or be a party to the making, altering, forging or counterfeiting of any letter, telegram or other written communication, paper, or instrument, by which making, altering, forging or counterfeiting, any other person shall be in any manner injured in his good name, standing, position or general reputation; or,

3. Who shall alter, or who shall cause, aid, abet, or otherwise connive at, or be a party to the uttering of any letter, telegram, report or other written communication, paper or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report or other written communication, paper or instrument, or paper purporting to be a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests or rights of such other person shall be misrepresented or otherwise injuriously affected; or,

4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or with like intent, shall use any such ticket, contract or other paper or writing, to effect an entrance or as evidence of his right to remain upon such grounds or premises; or, with like intent, shall sell, exchange or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange or delivery, any such ticket, contract or other paper or writing, knowing the same to have been forged, counterfeited or falsely altered —

Is guilty of forgery in the third degree.

Am'd by ch. 378 of 1884, and ch. 692 of 1892.

People v. Underhill, 142 N. Y. 38, rev'd 75 Hun, 331; People v. Hyland, 97 N. Y. 126, aff'd 28 Hun, 568; People v. Phelps, 72 N. Y. 371, aff'd 6 Hun, 428; 49 How. Pr. 462; People v. Abeel, 182 N. Y. 415; aff'd 100 App. Dix. 516.

§ 515. Id.

A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property, either

1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or

2. Makes a false entry in any such account or book of accounts; or

3. Willfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction;

Is guilty of forgery in the third degree.

See § 114, ante.

Whitney v. Hause, 36 App. Div. 420; People v. Underhill, 142 N. Y. 44, rev'g 75 Hun, 331; Phelps v. People, 72 N. Y. 371, aff'g 6 Hun, 428; 49 How. 462; People v. Herzog, 47 Misc. 50.

Evidence. People v. Curtiss, 118 App. Div. 259.

§ 516. Forging passage tickets.

A person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, cheque or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway or in any vessel or other public conveyance; and a person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

People v. Shall, 9 Cow. 778; People v. Harrison, 8 Barb. 560.

§ 517. Forging United States or state stamps.

A person who forges, counterfeits or alters any postage or revenue stamp of the United States, or any tax or revenue stamp of the state of New York, or who sells, or offers, or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

Am'd by ch. 242 of 1905.

§ 518. Officer of corporation selling, etc., shares.

An officer, agent or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punish-

ment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

See § 591, post.

§ 519. *Falsely indicating person as corporate officer.*

The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

M. L. Ins. Co. v. F. S. S. & G. S. F. R. R. Co., 189 N. Y. 149.

§ 520. *Terms "forge" and "forging," defined.*

The expressions "forge," "forged" and "forging," as used in this chapter, include false making, counterfeiting and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature, of a party or witness, and the placing or connecting together with intent to defraud different parts of several genuine instruments.

Marden v. Dorothy, 160 N. Y. 55; *People v. Palmer*, 109 N. Y. 419; 15 N. Y. St. Rep. 78; *People v. Underhill*, 142 N. Y. 38, rev'd 75 Hun, 333; *Flannigan v. Nat. Bank of Dever*, 8 N. Y. St. Rep. 826; 2 N. Y. Supp. 489; *People v. Migney*, 118 App. Div. 652.

§ 521. *Uttering, etc., forged instruments, etc., is forgery.*

A person who, knowing the same to be forged or altered, and with intent to defraud, utters, offers, disposes of or puts off as true, or has in his possession, with intent so to utter, offer, dispose of, or put off, either

1. A forged seal or plate, or any impression of either; or
2. A forged coin; or
3. A forged will, deed, certificate, indorsement, record, instrument or writing, or other thing, the false making, forging or altering of which is punishable as forgery;

Is guilty of forgery in the same degree as if he had forged the same.

Evidence. *People v. Dolan*, 186 N. Y. 4, rev'd 111 App. Div. 600; *People v. Comley*, 118 App. Div. 516.

What is within meaning of statute. *Paige v. People*, 3 Abb. Dec. 439; 6 Park. 683; *People v. Migney*, 118 App. Div. 652.

What does not constitute offense. *People v. Martin*, 36 Hun, 462; 3 N. Y. Cr. Rep. 122.

Separate offense. *People v. Tower*, 42 N. Y. St. Rep. 165; 17 N. Y. Supp. 396.

See also *Noaked v. People*, 25 N. Y. 380; *People v. Rathbun*, 21 Wend. 509; *People v. Wiman*, 85 Hun, 334; 61 N. Y. St. Rep. 66; 9 Misc. Rep. 442; *People v. Underhill*, 142 N. Y. 44; *Watson v. People*, 64 Barb. 130; *People v. Ryland*, 97 N. Y. 126; 29 Hun, 508; *People v. Altman*, 147 N. Y. 475; *People v. Camp*, 17 N. Y. Supp. 338; *People v. Courtney*, 28 Hun, 589; *People v. Adler*, 140 N. Y. 334.

§ 522. *Uttering writing signed with wrongdoer's name.*

Whenever the false making or uttering of any instrument or writing is forgery in any degree, a person is guilty of forgery in

the same degree, who, with intent to defraud, offers, disposes of, or puts off such an instrument or writing subscribed or indorsed in his own name, or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or indorsement is the act of another person of the same name, or of a person not in existence.

M. L. Ins. Co. v. F. S. S. & G. S. F. R. R. Co., 139 N. Y. 149; Third Nat. Bank v. Merchants' Nat. Bank, 76 Hun, 478.

§ 523. Forgery in first degree, how punished.

Forgery in the first degree is punishable by imprisonment for a term not exceeding twenty years.

Am'd by ch. 662 of 1892.

People v. Raymond, 96 N. Y. 38, aff'g 32 Hun, 124; 2 N. Y. Cr. Rep. 298; 19 Week. Dig. 137.

§ 524. Id.; in second degree.

Forgery in the second degree is punishable by imprisonment for a term not exceeding ten years.

Am'd by ch. 662 of 1892.

§ 525. Id.; in third degree.

Forgery in the third degree is punishable by imprisonment for not more than five years.

People v. Raymond, 96 N. Y. 38, aff'g 32 Hun, 124; 2 N. Y. Cr. Rep. 298; 19 Week. Dig. 137.

§ 526. Having possession of counterfeit coin.

A person who has in his possession a counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same, as true or as false, or to cause the same to be so uttered or passed, is punishable by imprisonment not more than five years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Weaver's case, 2 C. H. Rec. 57; Quinn's case, 6 C. H. Rec. 93.

§ 527. Advertising counterfeit money.

A person who prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, hand bill or any other written or printed matter, advertising, offering or purporting to advertise or offer for sale, loan, exchange, gift, or distribution, or to furnish, procure or distribute any counterfeit coin, paper money, internal revenue stamp, postage stamp or any other token of value, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp, or any other token of value, or giving, or purporting to give, either directly or indirectly, information where, how, of whom or by

what means any counterfeit coin, paper money, internal revenue stamp, postage stamp or token of value, can be procured or had, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, can be procured or had, or whoever shall aid, assist or abet in any manner, in any scheme or device whatsoever, offering or purporting to offer, for sale, loan, gift, exchange or distribution, any counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, whether called "green articles," "queer coin," "paper goods," "bills," "spurious treasury notes," "United States goods," "green paper goods," "business that is not legitimate," "cigars," "green cigars," or by other name or title, or any other device of a similar character, shall be guilty of a felony and on conviction shall be punished by imprisonment for not less than one year nor more than five years, and by a fine of not less than one hundred dollars nor more than one thousand dollars for each offense.

Whoever in and for executing, operating, promoting, carrying on, or in the aiding, assisting or abetting in the promoting, operating, carrying on, or executing of any scheme or device whatsoever to defraud, by use or means of any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution, or exchange, of counterfeit coin, paper money, internal revenue stamps, postage stamps or other token of value as provided in section one of this act, shall use any fictitious, false or assumed name or address, or name or address other than his own right, proper and lawful name; or whoever in the executing, operating, promoting, carrying on, aiding, assisting or abetting in the execution, promotion or carrying on of any scheme or device offering for sale, loan, gift, or distribution, or purporting to offer for sale, loan, gift, or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or other token of value, can be obtained or had, or who shall knowingly receive or take from the mails of the United States any letter or package addressed to any such fictitious, false or assumed name or address or name other than his own right, proper or lawful name shall be guilty of a felony, and on conviction shall be punished by imprisonment for not less than one year, nor more than five years, and by a fine of not less than one hundred dollars nor more than two thousand dollars.

Any letter, circular, writing or paper, offering or purporting to offer for sale, loan, gift, or distribution, or giving, or purporting to give information directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or token of value, may be obtained or had, or concerning any similar scheme or device to defraud the public, whether such article, matter or thing is called "green articles," "queer coins," "paper goods," "queer," "articles," "bills," "business that is not legitimate," "spurious treasury notes," "United States goods," "green paper goods," "green articles," "cigars," "green segars," or by any other name, de-

vice or title of a similar character, shall be deemed presumptive proof of the fraudulent character of such scheme.

Am'd by ch. 687 of 1887.

This section is intended to include all attempts to distribute counterfeit money. *People v. Reilly*, 51 Hun, 625; 22 N. Y. St. Rep. 659; 4 N. Y. Supp. 82.

Evidence. *People v. Marvin*, 79 N. Y. 310.

Indictment defective. *People v. Albow*, 149 N. Y. 180, rev'g 71 Hun, 125.

CHAPTER IV.

Larceny, Including Embuscement, Obtaining Property by False Pretenses, and Felonious Breach of Trust.

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§ 528. Larceny defined.

A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, either

1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withdraws, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or

2. Having in his possession, custody, or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association, or corporation, or as a public officer, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof:

Steals such property, and is guilty of larceny.

Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt or for conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color or aid of fraudulent or false representation or pretense, or of any false token or writing, to part with his property or the possession thereof was illegal, immoral or unworthy.

Am'd by ch. 581 of 1907.

Evidence. Murphy v. People, 16 Week. Dig. 13; People v. Beach, 87 N. Y. 508; People v. White, 1 N. Y. Cr. Rep. 466; People v. Kelly, 37 Hun, 180; People v. McCallam, 3 N. Y. Cr. Rep. 189; People v. Moore, 36

Hun, 84; People v. Carr, 3 N. Y. Cr. Rep. 573; People v. Ward, 3 N. Y. Cr. Rep. 483; People v. Pollock, 51 Hun, 613; 22 N. Y. St. Rep. 64; 4 N. Y. Supp. 297; People v. Smith, 121 N. Y. 578; People v. Wilkinson, 38 N. Y. St. Rep. 994; 14 N. Y. Supp. 827; People v. McHale, 39 N. Y. St. Rep. 785; 15 N. Y. Supp. 496; People v. Sweeney, 38 N. Y. St. Rep. 75; 13 N. Y. Supp. 25; People v. Sherman, 183 N. Y. 349; 45 N. Y. St. Rep. 298; 40 N. Y. St. Rep. 831; 16 N. Y. Supp. 782; People v. Davis, 46 N. Y. St. Rep. 213; 19 N. Y. Supp. 781; People v. Bergen, 43 N. Y. St. Rep. 81; 17 N. Y. Supp. 296; People v. Cassin, 42 N. Y. St. Rep. 183; 16 N. Y. Supp. 926; People v. Laurence, 137 N. Y. 517; 51 N. Y. St. Rep. 286; 66 Hun, 574; 50 N. Y. St. Rep. 247; 21 N. Y. Supp. 818, rev'd 70 Hun, 80; 53 N. Y. St. Rep. 536; 23 N. Y. Supp. 1095; People v. Pinckney, 67 Hun, 428; 51 N. Y. St. Rep. 310; 22 N. Y. Supp. 118; People v. Gillette, 76 Hun, 611; 59 N. Y. St. Rep. 176; 28 N. Y. Supp. 101; People ex rel. Murphy v. Crane, 80 App. Div. 202; People v. Kellogg, 105 App. Div. 202.

(Insufficient.) People v. Lesser, 31 Abb. N. C. 227; 76 Hun, 371; 50 N. Y. St. Rep. 130; 27 N. Y. Supp. 750; People v. Hendrickson, 18 App. Div. 404; 46 N. Y. Supp. 402; People v. Goldberg, 20 App. Div. 404; 46 N. Y. Supp. 913; People v. Peckens, 153 N. Y. 576; People v. Rogers, 22 App. Div. 147; 47 N. Y. Supp. 893; People v. Lovejoy, 37 App. Div. 52; People v. Sanborn, 14 N. Y. St. Rep. 123; People v. Pollock, 51 Hun, 613; People v. Lealand, 73 Hun, 162; People v. Hurlburt, 92 Hun, 46; People v. Gaynor, 33 App. Div. 98.

Indictment. Murphy v. People, 16 Week. Dig. 13; People v. Infeld, 1 N. Y. Cr. Rep. 146; People v. Petrea, 92 N. Y. 128; People v. Church, 3 N. Y. Cr. Rep. 57; 1 How. Pr. N. S. 366; People v. Moore, 36 Hun, 84; People v. Ward, 3 N. Y. Cr. Rep. 483; People v. Dimick, 107 N. Y. 26; 41 Hun, 616; People v. Cruger, 38 Hun, 500; People v. Dunn, 53 Hun, 381; 6 N. Y. Supp. 805; People v. Smith, 121 N. Y. 578; People v. Smith, 86 Hun, 485; 67 N. Y. St. Rep. 670; 33 N. Y. Supp. 989; People v. Sumner, 33 App. Div. 338; 53 N. Y. Supp. 817; People v. Lovejoy, 37 App. Div. 52; People v. Moran, 43 App. Div. 155; People v. Dumar, 11 N. Y. St. Rep. 19; People v. Dunn, 53 Hun, 381; People v. Rice, 128 N. Y. 649; 35 N. Y. St. Rep. 189; People v. Jeffery, 38 N. Y. St. Rep. 313; People v. Kehoe, 46 N. Y. St. Rep. 223; People v. Reavey, 38 Hun, 418.

What is subject of larceny. A satisfaction piece of a mortgage. People v. Stevens, 38 Hun, 62.

An agreement to pay a sum of money for a title is not larceny. People v. Hall, 74 Hun, 96; 56 N. Y. St. Rep. 223; 26 N. Y. Supp. 403.

When a promissory note is not the subject of larceny. People v. Hall, 74 Hun, 96; People v. Hart, 114 App. Div. 9.

Larceny by a bailee. Matter of McFarland, 59 Hun, 304; 36 N. Y. St. Rep. 574; Moss v. Cohen, 158 N. Y. 254; Matter of Dempsey, 32 Misc. 178; People v. Thomas, 83 App. Div. 226.

What constitutes larceny. People v. Hughes, 91 Hun, 954; People v. Lawrence, 137 N. Y. 517; People v. Miller, 169 N. Y. 339, rev'd 64 App. Div. 450; People v. Walker, 85 App. Div. 556; People v. Mills, 178 N. Y. 274, aff'g 91 App. Div. 331; People v. Snyder, 110 App. Div. 699; People v. Fletcher, 110 App. Div. 231; People ex rel. Perkins v. Morse, 187 N. Y. 410, aff'g 113 App. Div. 329; People v. Birnbaum, 114 App. Div. 480.

Defences. People v. Solomon, 12 App. Div. 627; 42 N. Y. Supp. 573; People v. Ouley, 7 N. Y. St. Rep. 794.

False pretences. People v. Wheeler, 180 N. Y. 487, rev'd 66 App. Div. 187; People v. Hart, 35 Misc. 182.

"Representations" to substantiate charge of larceny. People v. Moore, 37 Hun, 84; People v. Cuykendall, 3 N. Y. Cr. Rep. 312; People v. Reavey, 38 Hun, 418; 39 Hun, 364; People v. Ward, 3 N. Y. Cr. Rep. 483; People v. Suydam, 38 N. Y. St. Rep. 850; 14 N. Y. Supp. 492; People v. Rice, 128 N. Y. 649, aff'g 35 N. Y. St. Rep. 185; 13 N. Y. Supp. 161; People v. Lewis, 42 N. Y. St. Rep. 768; 16 N. Y. Supp. 881; People v. Evans, 69 Hun, 222; 53 N. Y. St. Rep. 591; 23 N. Y. Supp. 717; People v. Sumner, 33 App. Div. 338; 53 N. Y. Supp. 817.

Intent. People v. Burton, 1 N. Y. Cr. Rep. 297; People v. Woodward, 31 Hun, 57; Loomis v. People, 67 N. Y. 322; People v. Grim, 3 N. Y. Cr. Rep. 817; People v. Moore, 37 Hun, 84; People v. Pollock, 51 Hun, 613; People v. Civille, 9 N. Y. St. Rep. 104.

Grand larceny. People v. Carr, 3 N. Y. Cr. Rep. 578; People v. Alexander, 87 Hun, 618; 67 N. Y. St. Rep. 475; 33 N. Y. Supp. 830; People v. Hazard, 28 App. Div. 304; 50 N. Y. Supp. 1023; People v. Dumars, 11 N. Y. St. Rep. 19; People v. Sanborn, 14 N. Y. St. Rep. 123; People v. Kehoe, 46 N. Y. St. Rep. 223; People v. Civille, 9 N. Y. St. Rep. 104.

Attempt to commit larceny. People v. Moran, 54 Hun, 279; 27 N. Y. St. Rep. 18; 7 N. Y. Supp. 582.

Principal and agent. People v. Dimick, 107 N. Y. 26; 41 Hun, 616; People v. Carr, 3 N. Y. Cr. Rep. 578.

Accessories. People v. Dunn, 53 Hun, 381.

Petit larceny. People v. Tweed, 14 Week. Dig. 492; 89 N. Y. 638; People v. White, 1 N. Y. Cr. Rep. 466; People v. McTameney, 13 Abb. N. C. 56.

Possession. People v. Morse, 99 N. Y. 662; 3 N. Y. Cr. Rep. 321; People v. McDonald, 43 N. Y. 61; Smith v. People, 53 N. Y. 111; Hildebrand v. People, 56 N. Y. 394; Zink v. People, 77 N. Y. 122; People v. Carr, 3 N. Y. Cr. Rep. 578; People v. Dimick, 41 Hun, 616; People v. Cruger, 102 N. Y. 510.

Place of indictment. People v. Mitchell, 49 App. Div. 531.

Stockbroker. People v. Paine, 35 Misc. 763.

Check. People v. Whiteman, 72 App. Div. 91; People v. Huggins, 110 App. Div. 618.

Charging for free antitoxin. People ex rel. Lacina v. Lavin, 41 Misc. 53.

Under § 544. People v. Rothstein, 41 Misc. 123.

Another theft. People v. Sekeson, 111 App. Div. 490.

§ 529. Obtaining money or property by fraudulent draft.

A person who willfully, with intent to defraud, by color or aid of a cheque or draft, or order for the payment of money or the delivery of property, when such person knows that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the amount, or delivery of the property, although no express representation is made in reference thereto, obtains from another any money or property, is guilty of stealing the same and punishable accordingly.

See § 569, post.

People v. Ward, 3 N. Y. Cr. Rep. 484; Sieling v. Clark, 18 Misc. 465; People v. Dimick, 41 Hun, 621; 5 N. Y. Cr. Rep. 186; People v. Foote, 17 Hun, 218; Lesser v. People, 73 N. Y. 78, aff'g 12 Hun, 670; Smith v. People, 47 N. Y. 303; People v. Cuykendall, 3 N. Y. Cr. Rep. 312.

Check. People v. Whiteman, 72 App. Div. 91; People v. Huggins, 110 App. Div. 618; People v. Sipp, 111 App. Div. 504.

§ 530. Grand larceny in first degree.

A person is guilty of grand larceny in the first degree, who steals, or unlawfully obtains or appropriates, in any manner specified in this chapter,

1. Property of any value, by taking the same from the person of another in the night time; or
2. Property of the value of more than twenty-five dollars, by taking the same in the night time from any dwelling-house, vessel, or railway car; or
3. Property of the value of more than five hundred dollars, in any manner whatever.

Higgins v. People, 7 Lans. 110; People v. McTameney, 30 Hun, 508; 66 How. Pr. 73; 1 N. Y. Cr. Rep. 441; 13 Abb. N. C. 56; People v. Dunn, 53 Hun, 384; 7 N. Y. Cr. Rep. 174; 25 N. Y. St. Rep. 461; Bork v. People, 1 N. Y. 379, aff'g 1 N. Y. Cr. Rep. 368; 31 Hun, 360; Williams v. People, 24 N. Y. 405; People v. Pscherhofer, 64 Hun, 484; Phelps v. People, 72 N. Y. 334; 49 How. 462; Rhobiban v. People, 5 Park. 395.

Sufficiency of indictment. People v. Frazier, 36 Misc. 280.

When not. McCord v. People, 46 N. Y. 470; People v. Tompkins, 186 N. Y. 413, aff'g People v. Conlon, 116 App. Div. 170.

Inducing purchase of stock. People v. Putnam, 90 App. Div. 125.

False representations. People v. Snyder, 110 App. Div. 699; People v. Conley, 117 App. Div. 462.

§ 531. In second degree.

A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first

degree, in any manner specified in this chapter, steals or unlawfully obtains or appropriates,

1. Property of the value of more than twenty-five dollars, but not exceeding five hundred dollars, in any manner whatever; or
2. Property of any value, by taking the same from the person of another; or

3. A record of a court or officer, or a writing, instrument or record kept filed or deposited according to law, with, or in keeping of any public office or officer.

People v. Reavey, 38 Hun, 418; 39 Hun, 364; 4 N. Y. Cr. Rep. 1; *People v. McTameney*, 13 Abb. N. C. 56; 66 How. 73; 30 Hun, 505; 1 N. Y. Cr. Rep. 437; 65 How. 401; *People v. Grimm*, 3 N. Y. Cr. Rep. 317; *People v. Wiggins*, 92 N. Y. 656; 1 N. Y. Cr. Rep. 290; 38 Hun, 418; 4 N. Y. Cr. Rep. 1; *People v. Moore*, 37 Hun, 84; *People v. Cuykendall*, 3 N. Y. Cr. Rep. 312; *People v. Lytle*, 7 App. Div. 568; *People v. Morse*, 99 N. Y. 662; *People v. Gardner*, 73 Hun, 76; *People v. Carr*, 3 N. Y. Cr. Rep. 581; *People v. Moran*, 123 N. Y. 256; 54 Hun, 287; 33 N. Y. St. Rep. 397; 27 N. Y. St. Rep. 23; *People v. Sands*, 5 N. Y. Cr. Rep. 261; *People v. McCallam*, 103 N. Y. 587; *People v. Langley*, 114 App. Div. 427; *People v. Reiss*, 114 App. Div. 431; *People v. Smillie*, 118 App. Div. 611; *People v. Koller*, 116 App. Div. 173; *People v. Gluck*, 188 N. Y. 167, rev'd 117 App. Div. 432; *People v. Klein*, 117 App. Div. 196. Sufficiency of indictment. *People v. Frazier*, 36 Misc. 280.

¶ 532. Petit larceny.

Every other larceny is petit larceny.

People v. Smith, 86 Hun, 486; *Ward v. People*, 6 Hill, 144; *People v. Raymond*, 2 N. Y. Cr. Rep. 300; Justices, etc., v. *People*, 90 N. Y. 12; *People v. White*, 1 N. Y. Cr. Rep. 466; *People v. Beach*, 87 N. Y. 508; *People v. McTameney*, 30 Hun, 505; 66 How. 73; 13 Abb. N. C. 56; 1 N. Y. Cr. Rep. 437.

¶ 533. Grand larceny, in first degree, how punished.

Grand larceny in the first degree is punishable by imprisonment for a term not exceeding ten years.

Am'd by ch. 662 of 1892.

People ex rel. Knowlton v. Sadler, 2 N. Y. Cr. Rep. 439.

¶ 534. Id.; in second degree.

Grand larceny in the second degree is punishable by imprisonment for a term not exceeding five years.

Am'd by ch. 662 of 1892.

People v. Kerns, 7 App. Div. 539; *People v. Poucher*, 30 Hun, 577; 1 N. Y. Cr. Rep. 546.

¶ 535. Petit larceny a misdemeanor.

Petit larceny is a misdemeanor.

See § 15, ante. § 56 subd. 1, Code Cr. Pro.

People v. McTameney, 1 N. Y. Cr. Rep. 441; 30 Hun, 505; 66 How. 73; 13 Abb. N. C. 56; *People v. Trumble*, 1 N. Y. Cr. Rep. 442; *People ex rel. Laughlin v. Finn*, 26 Hun, 59; *People v. Finn*, 87 N. Y. 533; *Ex parte Hallenbeck*, 65 How. Pr. 401; 30 Hun, 505; 1 N. Y. Cr. Rep. 437; *People v. Rawson*, 61 Barb. 619; *People v. Raymond*, 2 N. Y. Cr. Rep. 300; *People ex rel. Knowlton v. Sadler*, 2 N. Y. Cr. Rep. 438; 17 Week. Dig. 492; *People v. Dutcher*, 83 N. Y. 240; 2 City Ct. 238; 65 N. Y. St. Rep. 164; *Cleveland v. Cromwell*, 110 App. Div. 82.

§ 536. Completed unissued instruments property.

All the provisions of this chapter apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, or a passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the maker thereof to any person as a purchaser or owner.

See §§ 201, 645, Penal Code.

People v. Stevens, 88 Hun, 65; 3 N. Y. Cr. Rep. 586; *People v. Wiley*, 8 Hill, 194; *People v. Jackson*, 8 Barb. 687; *People v. Phelps*, 72 N. Y. 384; 6 Hun, 401; 49 How. Pr. 437; *People v. Ward*, 3 N. Y. Cr. Rep. 483.

§ 537. Severance of fixture, etc., larceny.

All the provisions of this chapter apply to cases where the thing taken is a fixture or part of the realty, or any growing tree, plant, or produce, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at a previous time.

See § 640, subd. 8, post. § 56, subd. 4, Code Cr. Pro.

§ 538. Keeping wrecked goods, a misdemeanor.

A person who takes away goods or other property not his own from a stranded vessel, or any goods or other property cast by the sea upon the land, or found in a bay or creek, or who knowingly becomes possessed of any such goods or other property, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or one of the coroners or wreck masters of the county where the same was found, is guilty of a misdemeanor.

Dayton's case, 2 C. H. Rec. 154.

§ 539. Lost property.

A person, who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made every reasonable effort to find the owner and restore the property to him, is guilty of larceny.

People v. Seaton, 39 N. Y. St. Rep. 485; 15 N. Y. Supp. 272; *Tracy v. Seamans*, 7 N. Y. St. Rep. 146; *People v. Anderson*, 14 Johns. 294; *People v. Cogdell*, 1 Hill, 94; *People v. Kaatz*, 3 Park, 129; *People v. Swan*, 1 Park, 9; *People v. McGarren*, 17 Wend. 460.

§ 540. Bringing stolen goods into state, larceny.

A person, who having, at any place without the state, stolen the property of another, or received such property, knowing it to have been stolen, brings the same into this state, may be convicted and punished in the same manner as if such larceny or receiving had been committed within the state. Complaint may be made and the indictment found and tried, and the offense may be charged to

have been committed, in any county into or through which the stolen property is brought.

See § 16, subd. 2, ante.

Haskins v. People, 16 N. Y. 844; People v. Burke, 11 Wend. 129; Wills v. People, 3 Park. 478; People v. Dowling, 84 N. Y. 478.

§ 541. Conversion by trustee, larceny; how punished.

A person acting as executor, administrator, committee, guardian, receiver, collector or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, who secretes, withholds, or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or of property, or other valuable thing, or any proceeds thereof, in his possession or custody by virtue of his office, employment, or appointment, is guilty of grand or petty* larceny in such degree as is herein prescribed, wth reference to the amount of such property; and upon conviction, in addition to the punishment in this chapter prescribed for such larceny, may be adjudged to pay a fine, not exceeding the value of the property so misappropriated or stolen, with interest thereon from the time of the misappropriation, withholding, or concealment, and twenty per centum thereupon, in addition, and to be imprisoned for not more than five years in addition to the term of his sentence for larceny, according to this chapter, unless the fine is sooner paid.

*Widdersleeve v. Lester, 52 N. Y. St. Rep. 563; Bartow v. People, 18 Hun. 22; Thacher v. Hope Cem. Assn., 128 N. Y. 511; 88 N. Y. St. Rep. 521; Matter of Bushnell, 17 N. Y. St. Rep. 827.

§ 542. Disposition of fine.

So much of the fine authorized in the last section to be imposed, as does not exceed the amount or value of the property taken, appropriated, or stolen, with interest thereupon from the time of the commission of the offense, and a reasonable sum to defray the expenses of collecting the same, to be fixed by the Supreme Court, must, when received or collected, be paid to the county treasurer of the county where the conviction was had, for the benefit of the person injured or defrauded, or whose property the offender took, misappropriated, or concealed, or his representative or assignee; and must be paid over to him by the county treasurer, upon the order of the Supreme Court, made after notice to the district attorney of the county.

§ 543. Remission of fine.

In case of the payment of the value of the property stolen or taken, with interest, by the person convicted, or of the collection of the same by civil action, the court may, in its discretion, upon application by such person, and such notice to other persons interested, and to the district attorney of the county, as the court may

^a So in original.

direct, remit the fine imposed, pursuant to the last section, except the additional allowance for expenses.

§ 544. Verbal false pretense not larceny.

A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged. Whenever property shall be purchased by aid of a statement relating to the purchaser's means or ability to pay, made in writing and signed by the party to be charged, and in said statement the party to be charged shall state that he conducts a specified kind of business and keeps books of account of said business, then, if at the expiration of any term of credit obtained by him in so purchasing said property he shall fail to pay for the same, he shall at all times during the period of ninety days subsequent to such failure to pay, upon the request of the persons from whom said property was purchased, or their agents duly accredited in writing, produce within ten days after such request is made his said books of account and each and every one of them mentioned or described in said statement and permit the persons from whom said property was purchased, or their agents duly accredited in writing, to fully examine such books of account and each and every one of them mentioned or described in said statement, and to make copies of any part thereof. Upon such request being made, failure to so produce within ten days said books of account and each and every one of them mentioned or described in said statement shall be presumptive evidence that each and every pretense relating to the purchaser's means or ability to pay in said statement contained were false at the time of making said statement and were known to the purchaser to be false.

Am'd by ch. 556 of 1905.

People v. Dumar, 106 N. Y. 502; 11 N. Y. St. Rep. 19; 8 N. Y. Cr. Rep. 268, rev'g 42 Hun, 83; 5 N. Y. Cr. Rep. 60; 3 N. Y. St. Rep. 420; Watson v. People, 87 N. Y. 561; 26 Hun, 76; People v. Page, 22 N. Y. St. Rep. 278; 7 N. Y. Cr. Rep. 6; 4 N. Y. Supp. 780; People v. Moore, 37 Hun, 93; 3 N. Y. Cr. Rep. 468; People v. Rothstein, 180 N. Y. 148, aff'g 95 App. Div. 292, aff'g 42 Misc. 123.

False representations. People v. Snyder, 110 App. Div. 699.

§ 545. Value of evidence of debt, how ascertained.

If the thing stolen consists of a written instrument, being an evidence of debt, other than a public or corporate certificate, scrip, bond, or security having a market value, or being the transfer of or evidence of title to any property, or of the creating, releasing, or discharging, of any demand, right, or obligation, the amount of money due thereupon or secured to be paid thereby, and remaining unsatisfied, or which, in any contingency, might be collected thereupon or thereby, or the value of the property transferred or affected, or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be, is deemed the value of the thing stolen.

People v. Lovejoy, 37 App. Div. 55; People v. Fallon, 6 Park. 256; People v. Hall, 74 Hun, 99; Johnson v. People, 4 Den. 364; People v. Pickens, 153 N. Y. 501; People v. Caryl, 12 Wend. 547; Low v. People, 2 Park. 37.

§ 546. Id.; passenger ticket.

If the thing stolen is a ticket, paper or other writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon a railway car, vessel, or other public conveyance, the price at which a ticket, entitling a person to a like passage, is usually sold, is deemed the value thereof.

§ 547. Id.; of other articles.

In every case not otherwise regulated by statute, the market value of the thing stolen is deemed its value.

People v. White, 1 N. Y. Cr. Rep. 466; Johnson v. People, 4 Den. 364; People v. McCallam, 108 N. Y. 587.

§ 548. Claim of title, ground of defense.

Upon an indictment for larceny it is a sufficient defense that the property was appropriated openly and avowedly under a

claim of title preferred in good faith, even though such claim is untenable. But this section shall not excuse the retention of the property of another, to offset or pay demands held against him.

People v. Ouley, 7 N. Y. St. Rep. 795; People v. Thomas, 3 Hill, 169; People v. Grimm, 3 N. Y. Cr. Rep. 317; People v. Smith, 5 Park. 490; People v. Burton, 1 N. Y. Cr. Rep. 297. Attempt to commit. People v. Jaffe, 185 N. Y. 497, rev'd 112 App. Div. 516.

§ 549. Intent to restore property.

The fact that the defendant intended to restore the property stolen or embezzled, is no ground of defense, or of mitigation of punishment, if it has not been restored before complaint to a magistrate, charging the commission of the crime.

Chatterton v. People, 15 Abb. 147; 2 How. Pr. (N. S.) 97; Parr v. Loder, 97 App. Div. 218.

§ 550. Criminally receiving property.

A person, who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this chapter, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withdraws, or aids in concealing or withholding, any property, knowing the same to have been stolen, or appropriated wrongfully in such a manner as to constitute larceny under the provisions of this chapter, if such misappropriation has been committed within the state, whether such property were so stolen or misappropriated within or without the state, or who being a dealer in or collector of junk, metals or second hand materials, or the agent, employee or representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, iron or brass used by or belonging to a railroad, telephone, telegraph, gas or electric light company without ascertaining by diligent inquiry, that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property, and is punishable, by imprisonment in a state prison for not more than five years, or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

Am'd by ch. 326 of 1908.

Larceny in receiving stolen goods are separate offenses. People v. Brien, 53 Hun, 497; 25 N. Y. St. Rep. 239; 7 N. Y. Cr. Rep. 166.

Who may be convicted. People v. Wiley, 3 Hill, 194; Wells v. People, 3 Park. 473; People v. Stein, 1 Park. 202; Chatterton v. People, 15 Abb. 147; Goldstein v. People, 82 N. Y. 231.

Proof. Cohen v. People, 5 Park. 330; People v. Weldon, 111 N. Y. 569; People v. Dowling, 84 N. Y. 479; Willis v. People, 3 Park. 473; People v. Rando, 3 Park. 335; People v. Ammon, 92 App. Div. 206.

Indictment. People v. Weldon, *supra*; Hopkins v. People, 12 Wend. 76; People v. Caswell, 21 Wend. 86.

Proof of guilty knowledge. Copperman v. People, 56 N. Y. 591; People v. Shulman, 80 N. Y. 374; Coleman v. People, 55 N. Y. 82.

Verdict. Miller v. People, 25 Hun, 473; 13 Week. Dig. 260.

Place of conviction. Wills v. People, 3 Park. 473.

Place of indictment. People v. Dowling, 84 N. Y. 479; ch. 167 of 1877.

See also People v. Ray, 36 App. Div. 390; People v. Kerns, 7 App. Div. 589; People v. Johnson, 1 Park. 564; People v. Lytle, 7 App. Div. 568; People v. Welden, 111 N. Y. 574; 20 N. Y. St. Rep. 114; People v. Shulman, 80 N. Y. 374; Cohen v. People, 5 Park. 330; People v. Sanborn, 14 N. Y. St. Rep. 128; People v. Connor, 68 Hun, 78; 52 N. Y. St. Rep. 83.

Indictment. People v. Hartwell, 166 N. Y. 361, rev'd 55 App. Div. 234.

Ticket. People v. Fletcher, 110 App. Div. 231; People ex rel. Perkins v. Morse, 187 N. Y. 410, aff'g 113 App. Div. 329.

§ 551. Averment and proof.

It is not necessary to aver, in an indictment for an offense, specified in the last section, nor to prove upon the trial thereof, that the principal who stole the property has been convicted, or is amenable to justice.

People v. Brien, 53 Hun, 497; 7 N. Y. Cr. Rep. 166; 25 N. Y. St. Rep. 239; 6 N. Y. Supp. 198; Levy v. People, 19 Hun, 83; People v. Caswell, 21 Wend. 86.

CHAPTER V.

Extortion and Oppression.

Sec. 552. "Extortion" defined.

- 553. What threats may constitute extortion.
- 554. Punishment of extortion in certain cases.
- 555. Compulsion to execute instrument.
- 556. Oppression and extortion committed under color of official right.
- 557. Id.
- 558. Blackmail.
- 559. Written threat.
- 560. Attempts to extort money, or property, by verbal threats.
- 561. Unlawful threat referring to act of third person.

§ 552. "Extortion" defined.

Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

People v. Barondess, 133 N. Y. 649; 8 N. Y. Cr. Rep. 376; 45 N. Y. St. Rep. 248, rev'g 61 Hun, 572; 41 N. Y. St. Rep. 659; 8 N. Y. Cr. Rep. 234; *People v. Gardner*, 144 N. Y. 123; 73 Hun, 68; *People v. Whaley*, 6 Cow. 661; *People v. Kostka*, 4 N. Y. Cr. Rep. 429; *People v. McLaughlin*, 150 N. Y. 384; *People v. Wilzig*, 4 N. Y. Cr. Rep. 408; *People v. Hughes*, 50 N. Y. St. Rep. 67; 19 N. Y. Supp. 550; *People v. Weinheimer*, 117 App. Div. 603.

§ 553. What threats may constitute extortion.

Fear, such as will constitute extortion, may be induced by a threat:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family; or
2. To accuse him, or any relative of his or any member of his family, of any crime; or
3. To expose, or impute to him, or any of them, any deformity or disgrace; or
4. To expose any secret affecting him or any of them.

See §§ 254, 254a, ante.

People v. Barondess, 133 N. Y. 649; 8 N. Y. Cr. Rep. 376; 45 N. Y. St. Rep. 248, rev'g 61 Hun, 572; 41 N. Y. St. Rep. 659; 8 N. Y. Cr. Rep. 234; *People v. Gardner*, 144 N. Y. 123; 73 Hun, 68; *People v. McLaughlin*, 150 N. Y. 384; *People v. Hughes*, 50 N. Y. St. Rep. 67; 19 N. Y. Supp. 550; *People v. Weinheimer*, 117 App. Div. 603.

§ 554. Punishment of extortion in certain cases.

A person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or a threat mentioned in the last two sections, is punishable by imprisonment not exceeding five years.

People v. Barondess, 133 N. Y. 649; 8 N. Y. Cr. Rep. 376; 45 N. Y. St. Rep. 248, rev'g 61 Hun, 576; 16 N. Y. Supp. 438; 8 N. Y. Cr. Rep. 234; 41 N. Y. St. Rep. 659; *People v. Hughes*, 137 N. Y. 80; 50 N. Y. St. Rep. 64; 19 N. Y. Supp. 550; *People v. Weinheimer*, 117 App. Div. 603.

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§ 555. Compulsion to execute instrument.

The compelling or inducing of another, by such force or threat, to make, subscribe, seal, execute, alter or destroy any valuable security, or instrument or writing, affecting or intended to affect any cause of action or defense or any property, is an extortion of property, within the last two sections.

Am'd by ch. 384 of 1882.

§ 556. Oppression and extortion committed under color of official right.

A public officer, or a person pretending to be such, who, unlawfully and maliciously, under pretense or color of official authority,

1. Arrests another, or detains him against his will; or
2. Seizes or levies upon another's property; or
3. Dispossesses another of any lands or tenements; or
4. Does any other act, whereby another person is injured in his person, property or rights;

Commits oppression and is guilty of a misdemeanor.

See §§ 118, 119, 120, ante.

Sufficiency of evidence. *People v. Summers*, 40 Misc. 384.

Delaney v. Flood, 183 N. Y. 323, rev'g 106 App. Div. 642.

Watching pool room. *Stevens v. McAdoo*, 112 App. Div. 458.

§ 557. Id.

A public officer who asks, or receives, or agrees to receive, a fee or other compensation for his official service, either

1. In excess of the fee or compensation allowed to him by statute therefor; or
2. Where no fee or compensation is allowed to him by statute therefor;

Commits extortion and is guilty of a misdemeanor.

See §§ 48, 49, 50, ante.

§ 558. Blackmail.

A person who, knowing the contents thereof, and with intent, by means thereof, to extort or gain any money or other property, or to do, abet, or procure any illegal or wrongful act, sends, delivers, or in any manner causes to be forwarded or received, or makes and parts with for the purpose that there may be sent or delivered, any letter or writing, threatening

1. To accuse any person of a crime; or
2. To do any injury to any person or to any property; or
3. To publish or connive at publishing any libel; or
4. To expose or impute to any person any deformity or disgrace;

Is punishable by imprisonment for not more than five years.

See § 254, ante.

By attorney. *People v. Wickes*, 112 App. Div. 39.

People v. Eichler, 75 Hun, 28; *People v. Griffin*, 2 Barb. 427; *People v. Gillian*, 50 Hun, 37; 2 N. Y. Supp. 477; 18 N. Y. St. Rep. 681; *People v. Thompson*, 97 N. Y. 313; 2 N. Y. Cr. Rep. 527; *Edsall v. Brooks*, 17 Abb. Pr. 226; *People v. Wightman*, 104 N. Y. 601; 5 N. Y. St. Rep. 787; 5 N. Y. Cr. Rep. 549, aff'g 43 Hun, 358; 6 N. Y. St. Rep. 521; *People v. Triscoli*, 117 App. Div. 120.

§ 559. Written threat.

A person who knowing the contents thereof, sends, delivers, or in any manner causes to be sent or received any letter or other writing threatening to do any unlawful injury to the person or property of another, or any person who shall knowingly send or deliver or shall make and for the purpose of being delivered or sent, shall part with the possession of any letter, postal card or writing with or without a name subscribed thereto or signed with a fictitious name or with any letter, mark or other designation, with intent thereby to cause annoyance to any person, is guilty of a misdemeanor.

Am'd by ch. 120 of 1891.

Biggs v. People, 8 Barb. 547; People v. Griffin, 2 Barb. 427; Skiff v. People, 2 Park. 139.

§ 560. Attempts to extort money or property by verbal threats.

A person who, under circumstances not amounting to robbery, or an attempt at robbery, with intent to extort or gain any money or other property, verbally makes such a threat as would be criminal under either of the foregoing sections of this chapter, if made or communicated in writing, is guilty of a misdemeanor.

People v. Eichler, 75 Hun, 28.

§ 561. Unlawful threat referring to act of third person.

It is immaterial whether a threat, made as specified in this chapter, is of things to be done or omitted by the offender, or by any other person.

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CHAPTER VI.

False Personation and Cheats.

- Sec. 562. Falsely personating another.**
- 563. Limitations as to indictment.
 - 564. Receiving property in false character.
 - 565. Personating officers, policemen, and other persons.
 - 566. Obtaining signature by false pretenses.
 - 566a. False pedigree of animals.
 - 567. Obtaining property for charitable purposes.
 - 567a. Obtaining by fraud, etc., secrets or memberships in secret fraternities.
 - 567b. Fraudulent use of the name or title of secret fraternities.
 - 568. Obtaining negotiable evidence of debt by false pretenses.
 - 569. Using false check or order for payment of money.
 - 570. Obtaining employment, etc.
 - 571. Secreting personal property.
 - 572. Pawning, etc., borrowing^{*} property.
 - 573. Personating beneficiary of entrance ticket.
 - 574. Mock auctions.

§ 562. Falsely personating another.

A person who falsely personates another, and, in such assumed character,

- 1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of the latter; or
- 2. Becomes bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or
- 3. Confesses a judgment; or
- 4. Subscribes, verifies, publishes, acknowledges, or proves a written instrument, which by law may be recorded, with intent that the same may be delivered or used as true; or
- 5. Does any other act, in the course of any action or proceeding, whereby, if it were done by the person falsely personated, such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender, or to another person;

Is punishable by imprisonment in a state prison for not more than ten years.

Hodecker v. Strickler, 20 App. Div. 247; People v. Olsen, 39 N. Y. St. Rep. 297.

§ 563. Limitations as to indictments.

An indictment cannot be found, for the crime specified in subdivision first of the last section, except upon the complaint of the person injured, if there be any such person living, and within two years after the perpetration of the crime.

§ 564. Receiving property in false character.

A person who falsely personates another, or the officer or agent of any legally organized or incorporated society or institution, or falsely represents himself to be such an officer or agent, and in such assumed character receives any money or property, knowing

* So in original.

that it is intended to be delivered to the individual, or society, or institution or its officers or agents, so personated, or whose officer or agent he falsely claims to be, with the intent to convert the same to his own use or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny, of the money or property so received.

Am'd by ch. 327 of 1899.

§ 565. Personating officers, policemen and other persons.

A person who falsely personates a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character does an act, purporting to be official, whereby another is injured or defrauded, is guilty of a misdemeanor.

People v. Stetson, 4 Barb. 151; Curtin v. People, 89 N. Y. 621, aff'g 26 Hun, 584; McCord v. People, 46 N. Y. 470.

§ 566. Obtaining signature by false pretenses.

A person, who, with intent to cheat or defraud another, designedly, by color or aid of a false token or writing, or other false pretense, obtains the signature of any person to a written instrument, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both such fine and imprisonment.

See §§ 528, 529, 544, ante.

People v. Jefferey, 82 Hun, 413; People ex rel. Phelps v. Oyer, etc., 83 N. Y. 436; Brown v. People, 16 Hun, 585; People v. Cole, 48 N. Y. St. Rep. 351; 20 N. Y. Supp. 505; Watson v. People, 87 N. Y. 561; 26 Hun, 80; Therasson v. People, 82 N. Y. 288, rev'g 20 Hun, 55; Lesser v. People, 12 Hun, 670.

§ 566a. False pedigree of animals.

Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals the registration of any animal in the herd register or other register of any such club, association, society or company or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Added by ch. 153 of 1887.

§ 567. Obtaining property for charitable purposes.

A person, who willfully, by color or aid of any false token or writing, or other false pretense, obtains the signature of any per-

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son to any written instrument, or any money or property, for any alleged or pretended charitable or benevolent purpose, is punishable by imprisonment for not less than one nor more than three years, or by a fine to an amount not exceeding the value of the money or property obtained, or by both.

People v. Clough, 17 Wend. 351.

§ 567a. Obtaining by fraud or without authority signature to applications or property for degrees, secrets or membership in secret fraternities.

A person who willfully by color or aid of any false token or writing, or other false pretense or false statement verbal or written, or without authority of the grand lodge hereinafter mentioned, obtains the signature of any person to any written application, or any money or property for any alleged or pretended degree, or for any alleged or pretended secret work or for any alleged or pretended secrets of, or membership in any secret fraternal association, society, order or organization having a grand lodge in this state, or in any subordinate lodge or body thereof is punishable by imprisonment for not more than three years or by a fine to an amount not exceeding the value of the money or property obtained or by both.

Added by ch. 366 of 1905.

§ 567b. Fraudulent use of the name or title of secret fraternities.

Any person, firm, association, society, order or organization, or any officer, agent, representative or employee thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device without authority of the grand lodge hereinafter mentioned fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for ten years, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or who without such authority publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization, or in any alleged or pretended association, society, order or organization using or designated or claimed to be known by such title or imitation or resemblance thereof or who therein or thereby offers to sell, or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means any alleged or pretended degree or any alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or of any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained, conferred or communicated, is punishable by imprisonment for not more than three years or by a fine of not more than one thousand dollars for each offense.

Added by ch. 485 of 1906.

§ 568. Obtaining negotiable evidence of debt by false pretenses.

If the false token, by which money or property is obtained in violation of sections 566 and 567, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in a state prison not exceeding seven years, instead of by the punishments prescribed by those sections.

People v. Rynders, 12 Wend. 425.

§ 569. Using false check or order for payment of money.

The use of a matured cheque, or other order for the payment of money, as a means of obtaining a signature, or money or property, such as is specified in

sections 566 and 567, by a person who knows that the drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

See § 529, ante.

Sieling v. Clark, 18 Misc. 465; *Lesser v. People*, 73 N. Y. 78, aff'g 12 Hun, 668; *People v. Ward*, 15 Wend. 231; *Allen's case*, 3 C. H. Rec. 118; *People v. Clements*, 42 Hun, 289; 5 N. Y. Cr. Rep. 290; 3 N. Y. St. Rep. 700; *People v. Tompkins*, 1 Park, 224; *Foote v. People*, 17 Hun, 218; *Van Pelt's case*, 1 C. H. Rec. 137; *Conger's case*, 4 C. H. Rec. 65.

§ 570. Obtaining employment, etc.

A person who obtains employment, or appointment to any office or place of trust by color or aid of any false or forged letter or certificate of recommendation, or of any false statement in writing as to his name, residence, previous employment or qualification, or any person who shall willfully and intentionally fraudulently represent himself or herself to be a deaf and dumb person in order to collect, receive or otherwise obtain moneys, food, clothing or any thing of value whatsoever, is guilty of a misdemeanor.

Am'd by ch. 654 of 1886.

§ 571. Secreting personal property.

A person who, having theretofore executed a mortgage of personal property, or any instrument intended to operate as such, sells, assigns, exchanges, secretes, or otherwise disposes of any part of the property, upon which the mortgage or other instrument is at the time a lien, with intent thereby to defraud the mortgagor, or a purchaser thereof, is guilty of a misdemeanor.

Am'd by ch. 384 of 1882.

Massachusetts Nat. Bk. v. Shinn, 18 App. Div. 290; *Vaus v. Middlebrook*, 3 N. Y. St. Rep. 277; *People ex rel. Stokes v. Rieseley*, 38 Hun, 280; 4 N. Y. Cr. Rep. 110; *People v. Durante*, 19 App. Div. 292; *Millicamp v. People*, 14 Week. Dig. 252.

§ 572. Pawning, etc., borrowing* property.

A person who, without the consent of the owner thereof, sells, pledges, pawns, or otherwise disposes of any property which he has borrowed or hired from the owner, is guilty of a misdemeanor; but this section does not apply to a person leasing or lending property, for a time not exceeding that for which the same was leased or lent to himself.

Am'd by ch. 384 of 1882, and ch. 692 of 1892.

See § 355 ante.

§ 573. Personating beneficiary of entrance ticket.

A person who, with intent to wrongfully convert to his own use the benefits secured by any ticket, contract, or other paper or writing, appearing upon its face not negotiable, and which entitles, or purports to entitle the person whose name appears therein, to entrance upon the grounds or premises of a membership corporation, or being thereupon, to remain upon such grounds or premises, falsely personates or attempts to so personate any individual named in such ticket, contract or other paper or writing, as the grantee or beneficiary thereof, is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 574. Mock auctions.

A person who obtains money or property from another, or obtains the signature of another to any writing, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in a state prison not exceeding three years, or in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and in addition thereto he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this State.

See § 448, ante.

* So in original.

FRAUDULENTLY DESTROYING VESSELS. §§ 575-577

CHAPTER VII.

Fraudulently Fitting Out and Destroying Vessels.

- Sec. 575. Person willfully destroying vessel, etc.
576. Fitting out or lading any vessel, with intent to wreck the same.
577. Making false manifest, etc.

§ 575. Person willfully destroying vessel, etc.

A person, who wrecks, burns, sinks, scuttles, or otherwise injures or destroys a vessel, or the cargo of a vessel, or willfully permits the same to be wrecked, burned, sunk, scuttled, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment for not more than five years.

§ 576. Fitting out or lading any vessel, with intent to wreck the same.

A person who fits out any vessel, or who lades any cargo on board of a vessel, who with intent to permit or cause the same to be wrecked, sunk, or otherwise injured or destroyed, and thereby to defraud or prejudice an insurer or another person, is punishable by imprisonment in the state prison not exceeding ten years.

Am'd by ch. 662 of 1892.

§ 577. Making false manifest, etc.

A person, guilty of preparing, making or subscribing, a false or fraudulent manifest, invoice, bill of lading, ship's register or protest, with intent to defraud another, is punishable by imprisonment in a state prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

Burges v. Jackson, 18 App. Div. 298.

CHAPTER VIII.

Misconduct and Frauds in Relation to Insurance Corporations, Associations and Societies.

- Sec. 577a. False statements in applications for membership.
577b. Discriminations and rebates by life insurance corporations prohibited.
577c. Acting as agent of life insurance corporation without certificate of authority.
577d. Fire insurance corporations to use standard policy only.
577e. Overcharges by marine insurance agents.
577f. Misconduct of officers and agents of corporations for the insurance of domestic animals.
577g. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.
577h. Misconduct of officers and agents of co-operative insurance companies.
577i. Acts of agents of fire or marine insurance corporations organized in other countries, after revocation of certificate.
577j. Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.
577k. Rebate on life insurance policy.
578. Destroying property insured.
579. Presenting false proof of loss in support of claim upon policy of insurance.

§ 577a. False statements in applications for membership.

Any applicant, officer, agent, solicitor, examining physician, surgeon or other person, who knowingly or willfully makes any false or fraudulent statements or representations in or with reference to any application for membership or reinstatement or any other documentary or other proof for the purpose of obtaining or reinstating membership in or benefit from any fraternal beneficiary society, order or association, any corporation, association or society transacting the business of life or casualty insurance or both, upon the co-operative or assessment plan, or a corporation for the insurance of domestic animals, is guilty of a misdemeanor.

Added by ch. 692 of 1892, and ch. 692 of 1898.

§ 577b. Discriminations and rebates by life insurance corporations prohibited.

Any life insurance corporation doing business in this state; or any officer or agent thereof, who,

1. Makes any discrimination in favor of individuals of the same class or of the same expectation of life either in the amount of the premium charged or in any return of premiums, dividends, or other advantages, or
2. Makes any contract for insurance or agreement as to such contract other than that which is plainly expressed in the policy issued, or
3. Pays or allows, or offers to pay or allow as an inducement to any person to insure, any rebate or premium, or any special favor or advantage whatever, in the dividends to accrue thereon or any inducement whatever not specified in the policy, or

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4. Makes any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons, or in any other manner whatever; or demands or requires a greater premium from such colored persons than is at that time required by such company from white persons of the same age, sex, general condition of health and prospect of longevity; or makes or requires any rebate, diminution or discount upon the amount to be paid on such policy in case of the death of such colored persons insured, or inserts in the policy any condition, or makes any stipulation whereby such person insured shall bind himself, or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases, is guilty of a misdemeanor.

Added by ch. 692 of 1892.

Madden v. Underwriting Pub. Co., 10 Misc. 28.

§ 577c. Acting as agent of life insurance corporation without certificate of authority.

Any person acting as agent, sub-agent or broker of a life insurance corporation doing business in this state, except as agent operating solely on the weekly payment plan of insurance, who solicits or procures applications for insurance without first procuring a certificate of authority from the superintendent of insurance, is guilty of a misdemeanor.

Added by ch. 692 of 1892.

People v. Warden, etc., 157 N. Y. 148, rev'd 28 App. Div. 228.

§ 577d. Fire insurance corporations to use standard policy only.

Any fire insurance corporation, or any officer or agent thereof, who makes, issues, delivers, or offers to deliver any policy of insurance on property in this state which does not conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form or contract of policy filed in the office of the secretary of state, known and designated as the "Standard fire insurance policy of the state of New York," except as to such exceptions as are specially provided and allowed by law, is guilty of a misdemeanor, punishable by a fine of not less than twenty-five nor more than one hundred dollars for the first offense, and of not less than one hundred or more than two hundred and fifty dollars for each subsequent offense.

Added by ch. 692 of 1892.

Hamilton v. Royal Insurance Co., 156 N. Y. 836; Gough v. Davis, 24 Misc. 246.

§ 577e. Overcharges by marine insurance agents.

Any agent, shipper or other person, representing or acting for a marine insurance corporation doing business in this state; who,
1. Charges or receives, directly or indirectly from any person for

insurance of any property in transit upon the canals of the state, any greater sum than the regular rates of premiums fixed by the corporation for the insurance of such property; or,

2. Demands or receives upon any policy of insurance issued upon any such property, for the business of obtaining such insurance, a sum of money, as compensation or remuneration by way of salary, commission or in any other capacity, which includes in any case, over fifteen per centum of the premium, is guilty of a misdemeanor.

Added by ch. 692 of 1892.

§ 577f. Misconduct of officers and agents of corporations for the insurance of domestic animals.

Any officer or agent of a corporation organized for the insurance of domestic animals who,

1. Refuses to make any report or perform any duty required by law; or,

2. Intentionally makes any false or fraudulent statement or report, is guilty of a misdemeanor punishable by a fine of not less than one hundred or more than five hundred dollars.

Added by ch. 692 of 1892.

§ 577g. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.

Any officer, manager, director or agent of a casualty insurance corporation upon the co-operative or assessment plan, organized under the laws of this state, who transfers its risks or assets or any part thereof to or reinsurance its risks or any part thereof, in any insurance corporation or association of another state or country which is not, at the time of such transfer or reinsurance authorized by law to do insurance business in this state, is guilty of a misdemeanor.

Added by ch. 692 of 1892.

§ 577h. Misconduct of officers and agents of co-operative insurance companies.

Any officer, agent or representative of a corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, who,

1. Neglects or refuses to perform any duty required of him by law, or,

2. Intentionally makes any false or fraudulent statement or report, or,

3. Refuses to permit the superintendent of insurance or any examiner duly authorized by him for the purpose, to make an examination of the condition and business, books, papers and vouchers of any such corporation, association or society; or,

4. Thirty days after any such corporation has been notified by the superintendent of insurance to designate some person residing in the same city, village or town where the principal business office within the state of such corporation is located, as a person

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upon whom service of legal process and papers may be made, as provided by law, collects any money or issues any certificate in carrying on such business, during the failure of such corporation to designate such person; or,

5. Being within this state the agent or representative of any such corporation, association or society, which has neglected or refused to comply with any duty imposed upon it by law, or which has failed or neglected to procure from the superintendent of insurance the certificate of authority to transact business within this state as provided by law, acts as such agent, during such period of default,

Is guilty of a misdemeanor.

Added by ch. 692 of 1892.

§ 5771. Acts of agents of fire or marine insurance corporations, organized in other countries, after revocation of certificate.

Any agent of a fire or marine insurance corporation, incorporated by or existing under the government or laws of another country than the United States, and doing business in this state, who issued any new policy of insurance after having been notified by the superintendent of insurance that the certificate to such corporation to do business within this state has been revoked, is guilty of a misdemeanor.

Added by ch. 692 of 1892.

People v. Warden, etc., 157 N. Y. 148, rev'd 26 App. Div. 228.

§ 577j. Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.

Any person acting for himself or for others not having been specially licensed, as provided by law, by the superintendent of insurance, who solicits or procures, or aids in the solicitation or procurement of policies or certificates of insurance from, or adjusts losses or in any manner aids the transaction of any business for, any foreign insurance corporation, which has not executed and filed in the office of the superintendent of insurance, a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served, is guilty of a misdemeanor.

Added by ch. 692 of 1892.

People v. Warden, etc., 157 N. Y. 148, rev'd 26 App. Div. 228.

§ 577k. Rebate on life insurance policy.

Any person knowingly receiving any rebate or allowance or deduction from any premium, or any valuable thing, special favor or advantage whatever, as an inducement to take any policy of life insurance, not specified in the policy is guilty of a misdemeanor. No person shall be excused from attending and

testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Added by ch. 231 of 1906.

Am'd by ch. 741 of 1907.

§ 578. Destroying property insured.

A person who, with intent to defraud or prejudice the insurer thereof, willfully burns, or in any manner injures or destroys property not included or described in section 575, which is insured at the time against loss or damage by fire or by any other casualty, under such circumstances that the offense is not arson in any of its degrees, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

§ 579. Presenting false proofs of loss in support of claim upon policy of insurance.

A person who knowing it to be such, either presents or causes to be presented a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss upon a contract of insurance; or

Prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing with intent that the same may be presented or used in support of such a claim;

Is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Am'd by ch. 384 of 1882.

People v. Vaughan, 19 Misc. 300; People v. Spiegel, 75 Hun, 163.

FALSE WEIGHTS AND MEASURES. §§ 580-584

CHAPTER IX.

False Weights and Measures.

- Sec. 580. Using false weights, measures, etc.**
- 581. Keeping false weights.
 - 582. False weights and measures authorized to be seized.
 - 583. May be tested by committing magistrate, and destroyed, or delivered to district attorney.
 - 584. Shall be destroyed after conviction of offender.
 - 585. Stamping false weight or tare, on casks or packages.
 - 585a. Violations of regulations for sale of baled hay and straw.

§ 580. Using false weights, measures, etc.

A person who injures or defrauds another by using, with knowledge that the same is false, a false weight, measure, or other apparatus, for determining the quantity of any commodity, or article of merchandise, or by knowingly delivering less than the quantity he represents, is guilty of a misdemeanor.

See § 406, ante.

People v. Fish, 2 Park. 206.

§ 581. Keeping false weights.

A person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, is guilty of a misdemeanor.

§ 582. False weights and measures authorized to be seized.

A person who is authorized or enjoined by law to arrest another person for a violation of the last two sections, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 583. May be tested by committing magistrate and destroyed or delivered to district attorney.

The magistrate to whom any weight or measure is delivered pursuant to the last section, must, upon the examination of the defendant, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice in his judgment require.

§ 584. Shall be destroyed after conviction of offender.

Upon the conviction of the defendant, the district attorney must cause any weight or measure in respect whereof the defendant

stands convicted, and which remains in the possession or under the control of the district attorney, to be destroyed.

§ 585. Stamping false weight or tare on casks or packages.

A person who knowingly marks or stamps false or short weights, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

See § 406, ante.

§ 585a. Violations of regulations for sale of baled hay and straw.

A person who:

1. Sells or offers for sale baled hay or straw containing more than twenty pounds of wood to the bale, the weight of which is two hundred pounds or upward, or more than ten pounds of wood to the bale the weight of which is less than two hundred pounds; or
2. Sells or offers for sale any bale of hay or straw upon which the correct gross weight is not plainly marked or which weighs more than five pounds less than the gross weight so marked thereupon, is guilty of a misdemeanor.

Added by ch. 692 of 1898.

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CHAPTER X.

Fraudulent Insolvencies by Individuals.

Sec. 586. Fraudulent conveyances.

587. Fraudulent removal of property to prevent levy.

588. Knowingly receiving property.

589. Concealment of effects of insolvent debtor.

§ 586. Fraudulent conveyances.

A person who either

1. Becomes a party to a conveyance or assignment of real or personal property, or of an interest therein, with intent to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons; or

2. Being a party or privy to, or knowing of, such a conveyance or assignment so made, willfully puts the same in use as having been made in good faith;

Is guilty of a misdemeanor.

Loos v. Wilkinson, 113 N. Y. 485; 23 N. Y. St. Rep. 282, rev'd 51 Hun, 86; 5 N. Y. Supp. 414; 14 N. Y. St. Rep. 144; **Matter of Peterson**, 39 N. Y. St. Rep. 924; 15 N. Y. Supp. 489; **Lapham v. Marshall**, 51 Hun, 40; 3 N. Y. Supp. 603; 20 N. Y. St. Rep. 797; **Goodenough v. Spencer**, 2 T. & C. 511.

§ 587. Fraudulent removal of property to prevent levy.

A person who with intent to defraud a creditor, or to prevent any of his property from being made liable for the payment of any of his debts, or levied upon by an execution or warrant of attachment, removes any of his property or secretes, assigns, conveys or otherwise disposes of the same; or with intent to defraud a creditor, removes, secretes, assigns, conveys or otherwise disposes of any of his books of account, accounts, vouchers or writings in any way relating to his business affairs, or destroys, obliterates, alters or erases any of such books of account, accounts, vouchers or writings, or any entry, memorandum or minute therein contained, is guilty of a misdemeanor.

Am'd by ch. 681 of 1893.

See § 56, subd. 25, Code Crim. Pro.

Thomas v. People, 19 Wend. 480; **Matter of Peterson**, 39 N. Y. St. Rep. 924; 15 N. Y. Supp. 489; **Loomis v. People**, 19 Hun, 601; 46 How. Pr. 247; **People v. Underwood**, 16 Wend. 546; **People v. Morrison**, 13 Wend. 399; **Goodenough v. Spencer**, 2 T. & C. 508; **Stringfield v. Fields**, 7 Civ. Pro. Rep. 360.

See 7 Civ. Pro. Rep. 360.

§ 588. Knowingly receiving property.

A person who receives any property from another knowing that the same is transferred or delivered to him in violation of, or with intent to violate, the last section, is guilty of a misdemeanor.

§ 589. Concealment of effects of insolvent debtor.

A person who being an applicant, as an insolvent debtor, for a discharge from his debts, or for exoneration or discharge from imprisonment, or having made a general assignment of his property for the payment of his debts, willfully either

1. Conceals any part of his estate or effects, or any book, account, or other writing relative thereto; or
2. Omits to disclose, to the court before which his application is pending, any debt or demand which he has collected, or any transfer of property which he has made, since the presentation of his application; or
3. Fraudulently presents, or authorizes to be presented in his behalf, such an application, in a case where it is not authorized by law; or
4. Makes or presents to the court or officer in support of such an application, a petition, schedule, book, account, voucher, or other paper or document, knowing the same to contain a false statement; or
5. Fraudulently makes and exhibits, or alters, obliterates, or destroys an account or voucher, relating to the condition of his affairs, or an entry or statement in such an account or voucher; or
6. Commits any fraud upon a creditor, to induce him to petition for, or consent to such a discharge; or
7. Conspires with, or induces another fraudulently to consent as creditor to a petition for such discharge, or to practice any fraud in aid thereof;

Is guilty of a misdemeanor.

Gasherie v. Apple, 14 Abb. 64; *People v. Morrison*, 13 Wend. 399; *Dickinson v. Benham*, 10 Abb. 390; 19 Abb. 155; *Ion v. People*, 12 Wend. 344; *McButt v. Hirsch*, 4 Abb. 441; *Vanderwerken v. People*, 6 Wend. 530.

CHAPTER XI.

Fraudulent Insolvencies by Corporations and Other Frauds in their Management.

- Sec. 590. Frauds in the organization of corporations.
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§ 590. Frauds in the organization of corporations.

A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,
2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,
3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced;

Is guilty of a misdemeanor.

Am'd by ch. 602 of 1892.

§ 591. Fraudulent issue of stock, scrip, etc.

An officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledges or issues, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or
2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares, is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.

Am'd by ch. 662 of 1892.

§ 592. Frauds in procuring organization of corporation, etc.

An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

Am'd by ch. 662 of 1892.

People v. Helmer, 154 N. Y. 599.

§ 593. Acting for foreign corporations not authorized to do business in this state.

Any person or corporation who acts as agent or representative of any mortgage company or co-operative loan and building association organized outside of this state, while such mortgage company or co-operative loan and building association shall not be authorized under a license of the superintendent of banks to do business in this state; or

2. Acts as agent or representative in this state of a foreign corporation, other than a moneyed corporation, with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," or any other words or terms indicating, representing or holding out such company to be a moneyed corporation as a

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part of its name or corporate title, or who, in connection with such corporation or otherwise, shall put forth any sign containing said name, or who shall advertise or publish the said company as doing business in this state, directly or indirectly, through agents or otherwise, while such company shall not be authorized under a certificate procured from the secretary of state pursuant to section fifteen of the general corporation law to do business in this state, is guilty of a misdemeanor.

Am'd by ch. 692 of 1892, and ch. 489 of 1904.

People v. Warden, 157 N. Y. 148, rev'g 26 App. Div. 228.

§ 594. Misconduct of directors of stock corporations.

A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended,

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or

3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock, is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

Subds. 6 and 7 repealed by ch. 588 of 1901.

Lorillard v. Clyde, 15 N. Y. Supp. 811; 48 N. Y. St. Rep. 577.

See § 613, post.

§ 595. Misconduct of directors of banking corporations.

A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either

1. To make a loan, or discount, by which the whole amount of the loans and discounts of the corporation shall be greater than the amount allowed by law, or, where there is no express statutory limitation of the amount, greater than three times its capital stock then paid in and actually possessed; or

2. To make a loan or discount to any director of such corporation, or upon paper upon which any such director is responsible to an amount exceeding the amount allowed by statute, or where there is no express statutory limitation of the amount, exceeding in the aggregate one-third of the capital stock of such corporation, then paid in and actually possessed,

Is guilty of a misdemeanor.

§ 596. Loans made in violation of last section, not invalid.

Nothing in the last section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

§ 597. Sale or hypothecation of bank notes by officer, etc.

An officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 598. Officer of bank putting excessive number of its notes in circulation.

An officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 599. Officer or agent of banking corporation making guaranty or indorsement, in its behalf, in certain cases.

An officer or agent of any banking corporation, who makes or delivers any guaranty or indorsement on behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

§ 600. Bank officer overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts.

An officer, director, agent, teller, clerk or employee of any bank, banking association, savings bank or trust company, who, either,

1. Knowingly overdraws his account with such bank, banking association, savings bank or trust company, and thereby obtains the money, notes or funds of any such bank, banking association, savings bank or trust company; or

2. Asks or receives, or consents or agrees to receive, any commission, emolument, gratuity or reward, or any promise of any commission, emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, for procuring or endeavoring to procure for any person, firm or corporation, any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange, by any such bank, banking association, savings bank or trust company, or for permitting any person, firm or corporation to overdraw any account with such bank, banking association, savings bank or trust company, is guilty of a misdemeanor.

Am'd by ch. 248 of 1905.

People v. O'Donnell, 46 Hun, 360; 7 N. Y. Cr. Rep. 347; 10 N. Y. Supp. 251; 15 N. Y. St. Rep. 141; People v. Upton, 38 Hun, 107; 4 N. Y. Cr. Rep. 460; People v. Clements, 107 N. Y. 205, rev'd 42 Hun, 286; 5 N. Y. Cr. Rep. 277; 3 N. Y. St. Rep. 700.

§ 601. Receiving deposits in insolvent bank.

An officer, agent, teller or clerk of any bank, banking association or savings bank, and every individual banker or agent, and every private banker or agent and any teller or clerk of an individual banker, or of a private banker who receives any deposit, knowing that such bank or association or banker is insolvent, is guilty of a misdemeanor, if the amount or value of such deposit be less than twenty-five dollars; if the amount or value of such deposit be twenty-five dollars or over, such person shall be guilty of a felony, punishable by imprisonment for not less than one nor

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more than five years, or by a fine of not less than five hundred nor more than three thousand dollars, or by both.

Am'd by ch. 148 of 1902

The amendment of 1902 adds the provision as to a private banker.

Does not apply to private banker. Hall v. Baker, 66 App. Div. 131; this case was decided before the amendment of 1902.

Stapleton v. Odell, 21 Misc. 95; People v. Moore, 37 Hun, 84; 3 N. Y. Cr. Rep. 458; Atkinson v. Rochester P. Co., 114 N. Y. 175; 23 N. Y. St. Rep. 155; Cragle v. Hadley, 99 N. Y. 131.

§ 602. Unlawful investments by officers of savings banks.

Any officer or trustee of a savings bank authorizing or making any investment of the funds of the bank in securities, not authorized by law, is guilty of a misdemeanor.

Am'd by chs. 662 and 692 of 1892.

People v. Severence, 67 Hun, 182; 51 N. Y. St. Rep. 399.

§ 603. Misconduct by directors of monied corporations.

Every director of a monied corporation who :

1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud ; or

2. Willfully does any act as such director which is expressly forbidden by law, or willfully omits to perform any duty imposed upon him as such director by law;

Is guilty of a misdemeanor, if no other punishment is prescribed therefor by law.

The insolvency of a monied corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

Am'd by ch. 692 of 1892.

Cross v. Sackett, 6 Abb. Pr. 247; Harper v. Chamberlain, 11 Abb. Pr. 234.

§ 604. Misconduct by banks and bankers.

Any monied corporation or individual banker authorized to carry on the business of banking under the laws of this state who :

1. Receives, pays out, gives or offers in payment as money to circulate, or who attempts to circulate as money, any bill, note or other evidence of debt issued or purporting to have been issued by any corporation or individual, situated or residing without this state, and which bill, note or other evidence of debt shall, upon any part thereof, purport to be payable or redeemable at any place or by any corporation or individual within this state ; or,

2. Issues, utters or circulates, as money, or in any way, directly or indirectly, aids or assists in the issuing, uttering or circulating as money within this state, of any bank bill, note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual situated or residing without this state ; or procures or receives, in any manner whatever, any such bank bill, note or other evidence of debt with intent to issue, utter or circulate, or with intent to aid in issuing, uttering or circulating the same as money within this state ; or

3. Directly or indirectly lends or pays out for paper discounted or purchased any bank bill, note or other evidence of debt, which is not received at par by such corporation or banker for debts due such corporation or banker ; or.

4. Issues or puts in circulation any bank bill or note of any such corporation or banker, unless the same shall be made payable on demand and without interest, except bills of exchange on foreign countries or places beyond the limits or jurisdiction of the United States;

Is guilty of a misdemeanor. Nothing in this section contained shall be construed to prohibit any such corporation or banker from receiving and paying out such foreign bank bills as they shall receive at par in the ordinary course of their business, or to prohibit such corporation or banker from receiving foreign notes from their dealers and customers in the regular and usual course of their business, at a rate of discount not exceeding that which is or shall be at the time fixed by law, for the redemption of the bills of the banks of this state at their agencies, or from obtaining from the corporations, associations or individuals by which such foreign notes are made, the payment or redemption thereof.

Am'd by ch. 692 of 1892.

§ 605. Unlawful discount of bills of foreign banks.

Any person, association or corporation within the state who, directly or indirectly, on any pretense whatever, procures or receives or offers to receive from any corporation or person any bank bill or note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual, situated or residing without this state, at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 606. Misconduct by officers of banking department.

The superintendent of banks, or any officer in the banking department who countersigns bills or notes for any person or corporation exceeding the value of the interest-bearing stocks of the state of New York or of the United States, or other securities deposited with such superintendent by such person or corporation on account thereof, is guilty of a felony, punishable by a fine of not less than five thousand dollars or by imprisonment for not less than five years, or by both.

Am'd by ch. 692 of 1892.

§ 607. Using dies and plates of extinct state bank.

Any person who uses the dies and plates of a state bank in the manufacture of notes and bills, after such bank has become a national bank in pursuance of law, is guilty of a misdemeanor.

Original section repealed by ch. 377 of 1884. This section added by ch. 692 of 1892.

§ 608. Corporation other than moneyed using word "trust," etc.

Any person, association or corporation, other than a moneyed corporation, who shall within this state directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indem-

FRAUDUL'T INSOLVENCIES BY CORPORAT'S. §§ 609, 611

nity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of such name or title, is guilty of a misdemeanor; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and at the time of the passage of this act lawfully using either or any of such words as a part of its lawful corporate title, may lawfully continue to use such corporate title, provided and if it, being a corporation other than a moneyed corporation, shall, wherever the name shall be printed, written, engraved or displayed, add, in legible English characters, of substantially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation."

Added by ch. 489 of 1904.

Former § 608 repealed by ch. 377 of 1884.

§ 609. Private banker using sign.

Any person engaged in banking in this state, not subject to the supervision of the superintendent of banks, and not required by law to report to such superintendent, who was not engaged in such banking before May 23, 1885, who

1. Uses an office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words, indicating that such place or office is the place or office of a bank; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 610. Misconduct of officers and directors of stock corporations.

An officer or director of a stock corporation who:

1. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

2. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share;

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

Am'd by ch. 692 of 1892.

§ 611. Misconduct of officers and employes of corporations.

A director, officer, agent or employe of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Makes or concurs in making any false entry concurs in omitting to make any material entry in its books or accounts; or,

3. Knowingly (1), concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or

(2), omits or concurs in omitting any statement required by law to be contained therein; or,

4. Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same or take extracts therefrom.

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892, 692 of 1893 and ch. 286 of 1906.

§ 612. Misconduct of officers and agents of pipe-line corporations.

Any officer, agent or manager of a pipe-line corporation, who :

1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law; or,

2. Charges, accepts or agrees to accept for such receipt, transportation and delivery, a sum different from the amount fixed by such regulations; or,

3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any draw-back, rebate or allowance, so that any person shall, by any device, have or procure any transportation of products over such pipe line at a less rate or charge than is fixed in such regulations;

Is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both.

Am'd by ch. 692 of 1892.

§ 613. Misconduct at corporate elections.

Any person who :

2. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote or who issues a proxy to vote to any person for any sum of money or thing of value, except as expressly authorized by law; or

3. Acts as an inspector of election at any such meeting, and violates an oath taken by him, in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector;

Is guilty of a misdemeanor.

Subd. 1 repealed by ch. 588 of 1901.

Subd. 2 am'd by ch. 588 of 1901.

Am'd by ch. 692 of 1892.

§ 614. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.

It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

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The term "director" as used in this chapter includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record of minutes.

Am'd by ch. 692 of 1892.

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CHAPTER XII.

Frauds in the Sale of Passage Tickets.

- Sec. 615. Sale of passage tickets on vessels and railroads, forbidden, except by agents specially authorized.**
616. Sales by authorized agents, restricted.
- 616a. Sale of passenger ticket, etc., without authority.
- 616b. Selling passenger ticket, etc., not properly signed.
- 616c. Violation of sections 616a and 616b.
617. Unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets.
618. Punishment for violation of the preceding sections.
619. Conspiring to sell passage tickets in violation of law.
- 619a. Selling transfer tickets.
620. Conspirators may be indicted, notwithstanding object of conspiracy has not been accomplished.
621. Offices kept for unlawful sale of passage tickets, declared disorderly houses.
622. Owners, purasers, etc., allowed to sell tickets.
623. Station masters, conductors, etc., allowed to sell tickets.
624. What must be stated in passage tickets.
625. Sale of tickets not filled out as required in last section, a misdemeanor.
626. Certain sales and exchanges of passenger tickets.
627. "Company" defined.

§ 615. Sale of passage tickets on vessels and railroads forbidden except by agents specially authorized.

No person shall issue or sell, or offer to sell, any passage ticket, or an instrument giving or purporting to give any right, either absolutely or upon any condition or contingency to a passage or conveyance upon any vessel or railway train, or a berth or state-room in any vessel, unless he is an authorized agent of the owners or consignees of such vessel, or of the company running such train, except as allowed by sections six hundred and sixteen and six hundred and twenty-two; and no person is deemed an authorized agent of such owners, consignees or company, within the meaning of the chapter, unless he has received authority in writing therefor, specifying the name of the company, line, vessel or railway for which he is authorized to act as agent, and the city, town or village, together with the street and street number, in which his office is kept, for the sale of tickets.

Original section repealed by ch. 384 of 1882. This section added by ch. 506 of 1897.

Act of 1897 declared unconstitutional. *People ex rel. Tyroler v. Warden*, 157 N. Y. 116, rev'd 26 App. Div. 231.

§ 616. Sales by authorized agents restricted.

No person, except as allowed in section six hundred and twenty-two, shall ask, take or receive any money or valuable thing as a consideration for any passage or conveyance upon any vessel or railway train, or for the procurement of any ticket or instrument giving or purporting to give a right, either absolutely or upon a

condition or contingency, to a passage or conveyance upon a vessel or railway train, or a berth or state-room on a vessel, unless he is an authorized agent within the provisions of the last section; nor shall any person, as such agent, sell or offer to sell, any such ticket, instrument, berth or state-room, or ask, take or receive any consideration for any such passage, conveyance, berth or state-room, excepting at the office designated in his appointment, nor until he has been authorized to act as such agent according to the provisions of the last section, nor for a sum exceeding the price charged at the time of such sale by the company, owners or consignees of the vessel or railway mentioned in the ticket. Nothing in this section or chapter contained shall prevent the properly authorized agent of any transportation company from purchasing from the properly authorized agent of any other transportation company a ticket for a passenger to whom he may sell a ticket to travel over any part of the line for which he is the properly authorized agent, so as to enable such passenger to travel to the place or junction from which his ticket shall read. Every person who shall have purchased a passage ticket from an authorized agent of a railroad company, which shall not have been used, or shall have been used only in part, may, within thirty days after the date of the sale of said ticket, present the same, unused or partly used, for redemption, at the general office of the railroad company which issued said ticket, or at the ticket office where said ticket was sold, or at the ticket office at the point to which the ticket has been used. If said ticket, wholly unused, shall be presented for redemption at the ticket office where sold, the same shall be then and there redeemed by the agent in charge of said ticket office at the price paid for said ticket. If said ticket, partly used, shall be presented for redemption at the ticket office where sold, or at the ticket office at the point to which used, the ticket agent at either of said offices, upon the delivery of said ticket, shall issue to the holder thereof a receipt, properly describing said ticket and setting forth the date of the receipt of said ticket, and the name of the person from whom received, and shall thereupon forthwith transmit said ticket for redemption to the general office. It shall be the duty of every railroad company to redeem tickets presented for redemption, as in this section provided for, promptly and within not to exceed thirty days from the date of presentation at the general office or from the date of the aforesaid receipt. A wholly unused ticket shall be redeemed at the price paid therefor. A partly used ticket shall be redeemed at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. Mileage books shall be redeemed within thirty days after the date of the expiration thereof in the same manner. Every railroad company which shall wrongfully refuse redemption, as in this section provided for, shall forfeit to the aggrieved party fifty dollars, which sum may be recovered, together with the amount of redemption money to which the party is entitled, in an action in any court of competent jurisdiction, together with costs; but no such action can be main-

tained unlessss commenced within one year after the cause of action accrued.

Am'd by ch. 506 of 1897.

Act of 1897 declared unconstitutional. People ex rel. Tyroler v. Warden, 157 N. Y. 116, rev'g 26 App. Div. 231.

§ 616a. Sale of passenger ticket, etc., without authority.

No person issuing, selling or offering to sell any passage ticket or any instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to a passage or conveyance upon any vessel, or a berth or state-room in any vessel, shall hold himself out to be or advertise himself in any way as the agent of the owners or consignees of such vessel or line, unless he has received authority in writing therefor, specifying the name of the company, line or vessel for which he is authorized to act as agent and the city, town or village, together with the street and street number in which his office is kept for the sale of tickets, and unless such written authorization is conspicuously displayed in such office. Provided that this section shall not apply to the sale of passage tickets on board any such vessel or to the offices of the actual owners or consignees of such vessel. No person issuing, selling or offering to sell any such passage ticket or instrument giving or purporting to give any such right to passage or conveyance shall give any false or misleading information in regard to said passage ticket or instrument or line over which such passage is sold, or as to his agency for such line or vessel.

Added by ch. 546 of 1907.

§ 616b. Selling passenger ticket, etc., not properly signed.

No person agreeing to furnish or secure for any other person, for a consideration, passage by vessel from any foreign port to any port in this state shall issue any advice, order, certificate or other instrument purporting to entitle one or more persons to a passage ticket or other evidence of a right of passage, unless every such advice, order, certificate or instrument shall be signed or countersigned by a duly appointed agent as provided in section six hundred and sixteen-a, of the vessel or line over which said advice, order, certificate or other instrument is held out to be good to secure such passage ticket or other evidence of a right of passage. Every such order, advice, certificate or other instrument and every receipt for money paid for or on account of any such advice, order, certificate or other instrument, shall contain a statement of the amount paid or to be paid for such passage; the name, address and age of the person or persons for whom intended; the name of the company or line, if any, to which the vessel on which passage is to be made belongs; the place from which such passage is to commence; the place where such passage is to terminate; the name of the person or prsons purchasing such advice, order, certificate or other instrument, and such ad-

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vice, order, certificate or other instrument must be signed by the person who issues it.

Added by ch. 546 of 1907.

§ 616c. Violation of sections 616a and 616b.

Any person violating any of the provisions of section six hundred and sixteen-a, or six hundred and sixteen-b shall be guilty of a misdemeanor and for a second or further violation shall be guilty of a felony.

Added by ch. 546 of 1907.

§ 617. Unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets.

No person other than an agent appointed, as provided in section 615, shall sell, or offer to sell, or in any way attempt to dispose of any order, certificate, receipt or other instrument for the purpose, or under the pretense, of procuring any ticket, or instrument mentioned in section 615, upon any company or line, vessel or railway train therein mentioned. And every such order sold or offered for sale by any agent, must be directed to the company, owners or consignees at their office.

§ 618. Punishment for violation of the preceding sections.

A person guilty of a violation of any of the provisions of the preceding sections of this chapter is punishable by imprisonment in a state prison not exceeding two years, or imprisonment in a county jail not exceeding six months.

Am'd by ch. 662 of 1892.

People ex rel. Tyroler v. Warden, 157 N. Y. 116, rev'g 26 App. Div. 231.

§ 619. Conspiring to sell passage tickets in violation of law.

All persons who conspire together to sell or attempt to sell, to any person, any passage ticket, or other instrument mentioned in sections 615 and 617, in violation of those sections, and all persons, who, by means of any such conspiracy, obtain, or attempt to obtain any money or other property, under the pretense of procuring or securing any passage or right of passage in violation of this chapter, are punishable by imprisonment in a state prison not exceeding five years.

§ 619a. Selling transfer tickets.

No transfer ticket or written or printed instrument giving, or purporting to give, the right of transfer to any person or persons

from a public conveyance operated upon one line or route of a street surface railroad to a public conveyance upon another line or route of a street surface railroad, or from one car to another upon the same line of street surface railroad, shall be issued, sold or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument or shall sell or give away such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage after the time limited for its use shall have expired, shall be guilty of a misdemeanor.

Added by ch. 663 of 1898.

§ 620. Conspirators may be indicted, notwithstanding object of conspiracy has not been accomplished.

Persons guilty of violating the last section may be indicted and convicted for a conspiracy, though the object of such conspiracy has not been executed.

See § 171, ante.

§ 621. Offices kept for unlawful sale of passage tickets declared disorderly houses.

All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this chapter, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons associating together for the purpose of violating any of the provisions of this chapter are punishable by imprisonment in a county jail for a period not exceeding six months.

Am'd by ch. 662 of 1892.

People ex rel. Tyroler v. Warden, 157 N. Y. 135, rev'd 26 App. Div. 231.

§ 622. Owners, purser, etc., allowed to sell tickets.

The provisions of this chapter do not prevent the actual owners or consignees of any vessel from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel from selling in his office on board of such vessel any passage tickets upon such vessel.

§ 623. Station masters, conductors, etc., allowed to sell tickets.

The provisions of this chapter do not prevent the station master or other ticket agent upon any railway, from selling in his office

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at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

§ 624. What must be stated in passage tickets.

A ticket or instrument issued as evidence of a right of passage upon the high seas, from any port in this state, to any port of any other state or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person or persons purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

Enright v. People, 21 How. Pr. 383.

§ 625. Sale of tickets not filled out as required in last section, a misdemeanor.

A person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

§ 626. Certain sales and exchanges of passenger tickets.

A person who,

1. Sells, or causes to be sold, a passage ticket, or order for such ticket on any railway, vehicle or vessel, to any emigrant passenger at a higher rate than one and a quarter cents per mile; or

2. Takes payment for any such ticket or order for a ticket under a false representation as to the class of the ticket, whether emigrant or first-class; or

3. Directly or indirectly, by means of false representations, purchases or receives from an emigrant passenger any such ticket; or

4. Procures or solicits any such passenger having such a ticket, to exchange the same for another passenger ticket, or to sell the same and purchase some other passenger ticket; or

5. Solicits or books any passenger arriving at the port of New York from a foreign country, before such passenger has left the

vessel on which he has arrived, or enters or goes on board any vessel arriving at the port of New York from a foreign country, having emigrant passengers on board, for the purpose of soliciting or booking such passengers, and a person or agent of a corporation employing any person for the purpose of booking such passengers before leaving the ship;

Is guilty of a misdemeanor.

People v. Warden of Prison, 157 N. Y. 140, rev'd 26 App. Div. 228; People v. Jaehne, 103 N. Y. 197.

§ 627. "Company" defined.

The term "company," as used in this chapter, includes all corporations, whether created under the laws of this state, or of the United States, or of those of any other state or nation.

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CHAPTER XIII.

Fraudulent Issue of Documents of Title to Merchandise.

Sec. 628. By pipe-line corporations.

629. Issuing fictitious bills of lading, receipts and vouchers.
630. Erroneous bills of lading, or receipts, issued in good faith, excepted.
631. Duplicate receipts must be marked "duplicate."
632. Selling, hypothecating or pledging property received for transportation or storage.
633. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.
634. Property demanded by process of law.
- 634a. Failure to issue bill of lading.

§ 628. By pipe-line corporations.

A pipe-line corporation, or a person being the officer, agent, manager or representative thereof, who:

1. Accepts, makes or issues any receipt, certificate or order of any kind for any commodity, unless the commodity represented is actually at the time in the possession of the corporation; or,
2. Delivers to any person any petroleum or other commodity received for transportation by such corporation without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same; or,
3. Having parted with the possession of any commodity and having received therefor an order, voucher, receipt or certificate shall reissue the same, or shall not cause it to be canceled by the word "canceled" stamped or printed legibly across the face thereof, and to be filed and recorded by such corporation, as provided by law;

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

§ 629. Issuing fictitious bills of lading, receipts and vouchers.

A person who:

1. Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher; or,
2. Carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading or other voucher for merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument,

whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness;

Is guilty of a misdemeanor, punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Am'd by ch. 692 of 1892.

First Nat. Bank v. Dean, 27 Abb. N. C. 281; 16 N. Y. Supp. 107, aff'd, 44 N. Y. St. Rep. 208; 17 N. Y. Supp. 375; *Mairs v. B. & O. R. R. Co.*, 73 App. Div. 265.

§ 630. Erroneous bills of lading or receipts, issued in good faith, excepted.

No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

§ 631. Duplicate receipts must be marked "duplicate."

A person mentioned in sections 628 and 629, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 632. Selling, hypothecating or pledging property received for transportation or storage.

A person mentioned in sections 628 and 629, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 633. Bill of lading, or receipt, issued by warehouseman, must be canceled on redelivery of the property.

A person mentioned in section 629, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such receipt or voucher bears upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Burnham v. C. V. S. Co., 142 N. Y. 172; *First Nat. Bank v. N. Y. C. & H. R. R. Co.*, 85 Hun, 165; *Mairs v. B. & O. R. R. Co.*, 73 App. Div. 265, aff'd 175 N. Y. 409.

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§ 634. Property demanded by process of law.

The last two sections do not apply to any case where property is demanded by virtue of legal process.

Zachrisson v. Ahman, 2 Sandf. 68; Keyser v. Harbeck, 3 Duer, 373.

§ 634a. Failure to issue bill of lading.

Any person who, being the owner, master or agent of any vessel transporting merchandise or property between the ports of this state, departs with such vessel or causes such vessel to depart from the port where such merchandise or property is taken on board, without giving or tendering to the shipper of such merchandise or property, if a bill of lading be demanded by such shipper, a bill of lading or shipping document as provided by section forty-one of the domestic commerce law, is guilty of a misdemeanor.

Added by ch. 156 of 1896.

CHAPTER XIV.

Malicious Mischiefs and Other Injuries to Property.

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§ 635. Injury to railroad tracks, etc., how punished.

A person who willfully:

1. Displaces, loosens, removes, injures or destroys any rail, sleeper, switch, bridge, viaduct, culvert, embankment or structure or any part thereof, attached, appertaining to or connected with any railway, or by any other means attempts to wreck, destroy, or so damage any car, tender, locomotive or railway train or part thereof, while moving or standing upon any railway track in this state, as to render such car, tender, locomotive or railway train wholly or partially unfit for its ordinary use, whether operated by steam, electricity or other motive power; or
2. Places any obstruction upon the track of any such railway; or
3. Willfully destroys or breaks any guard erected or maintained by a railroad corporation as a warning signal for the protection of its employees; or
4. Willfully discharges a loaded firearm or projects, or throws a stone or other missile at a railway train, or at a locomotive, car or vehicle standing or moving upon a railway; or
5. Willfully displaces, removes, cuts, injures or destroys any wire, insulator, pole, dynamo, motor, locomotive, or any part thereof, attached, appertaining to or connected with any railway operated by electricity, or willfully interferes with or interrupts any motive power in running such road, or willfully places any

obstruction upon the track of such railroad, or willfully discharges a loaded firearm, or projects or throws a stone or any other missile at such railway train or locomotive, car or vehicle, standing or moving upon such railway; or

6. Removes a journal brass from a car while standing upon any railroad track in this state, without authority from some person who has a right to give such authority, is punishable as follows: First. If thereby the safety of any person is endangered, by imprisonment for not more than twenty years. Second. In every other case by imprisonment for not more than five years.

Am'd by ch. 280 of 1890, ch. 692 of 1892, ch. 728 of 1895, ch. 183 of 1897.
People v. Dowling, 1 N. Y. Cr. Rep. 529; Loomis v. Edgerton, 19 Wend. 419.

§ 636. Damaging building, etc., by explosion.

A person who unlawfully and maliciously, by the explosion of gunpowder, or any other explosive substance, destroys or damages any building or vessel, is punishable as follows:

1. If thereby the life or safety of a human being is endangered, by imprisonment for not more than ten years;
2. In every other case by imprisonment for not more than five years.

See §§ 201, 645, Penal Code.

§ 637. Burning certain property, how punished.

A person who willfully burns or sets fire to any grain, grass, or growing crop, or standing timber, or to any building, fixtures or appurtenances to real property of another, under circumstances not amounting to arson in any of its degrees, is punishable by imprisonment for not more than four years.

See § 486.

People v. Fanshawe, 137 N. Y. 75; 47 N. Y. St. Rep. 331, aff'g 65 Hun, 77; 50 N. Y. St. Rep. 3.

§ 638. Altering, etc., signal or light for vessel, etc.

A person who, with intent to bring a vessel, railway engine, or railway train into danger either

1. Unlawfully or wrongfully shows, masks, extinguishes, alters, or removes a light or other signal; or
2. Exhibits any false light or signal;

Is punishable by imprisonment for not more than ten years.

§ 639. Injuring highway, boundary, pier, etc.

A person who willfully or maliciously displaces, removes, injures, or destroys,

1. A public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way; or
2. A pier, boom, or dam, lawfully erected or maintained upon any water within the state, or hoists any gate in or about such dam; or

3. A pile, or other material, fixed in the ground and used for securing any sea-bank or sea walls, or the bank or dam of any river or other water, or any dock, quay, jetty, or lock; or

4. A buoy or beacon, lawfully placed in any waters within the state; or
 5. A tree, rock, post or other monument, which has been either erected or marked for the purpose of designating a point in the boundary of the state, or of a county, city, town, or village, or of a farm, tract, or lot of land, or any mark or inscription thereon; or
 6. A mile-board, mile-stone, or guide post, erected upon a highway, or any inscription upon the same; or
 7. A line of telegraph or telephone, wire or cable, pier or abutment, or the material or property belonging thereto, without lawful authority, or who shall unlawfully and willfully cut, break, tap, or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy in any unauthorized manner any message, communication or report passing over it, in this state; or who shall willfully prevent, obstruct or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance or delivery, in this state, of any authorized message, communication or report by or through any telegraph or telephone line, wire or cable, under the control of any telegraph or telephone company doing business in this state; or who shall aid, agree with, employ or conspire with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, or who shall occupy, use a line, or shall knowingly permit another to occupy, use a line, a room, table, establishment, or apparatus or unlawfully do or cause to be done any of the acts hereinbefore mentioned; or
 8. A pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendage connected therewith; or
 9. A sewer or drain, or a pipe or main connected therewith, or forming part thereof; or who
 10. Destroys or damages with intent to destroy or render useless any engine, machine, tool or implement intended for use in trade or husbandry;
 11. Any person who shall without authority of the corporation owning the same open any fire-hydrant, except for the purpose of extinguishing fire, or who shall wantonly injure or impair the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of ten dollars or by imprisonment in a county jail for the term of ten days; and it shall be the duty of all policemen, deputy sheriffs or constables to arrest any person found violating this act.
- Is punishable by imprisonment for not more than two years.
- Am'd by ch. 372 of 1892 and ch. 388 of 1899.
See § 56, Code Crim. Pro.
- Krauskopf v. Tallman, 38 App. Div. 279; Waas v. Stephens, 128 N. Y. 127; 38 N. Y. St. Rep. 883; Hewitt v. Newburger, 141 N. Y. 541.

§ 639a. False alarms of fire; unlawful interference with fire alarm telegraph systems.

Any person who shall wilfully give any false alarm of fire, or who shall wilfully tamper, meddle or interfere with any station or signal box of any fire alarm telegraph system, or who shall wilfully break, injure, deface or remove any such box or station, or who shall wilfully break, injure, destroy, or disturb any of the wires, poles or other supports and appliances connected with or forming a part of any fire alarm telegraph system shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars or by imprisonment for not less than ten days or by both such fine and imprisonment.

Added by ch. 279 of 1905.

§ 640. Malicious injury and destruction of property.

A person who willfully:

1. Cuts down, destroys or injures any wood or timber standing or growing, or which has been cut down and is lying on lands of another, or of the people of the state; or,

2. Cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the state; or,
3. Severs from the freehold of another, or of the people of the state, any produce thereof, or anything attached thereto; or,
4. Digs, takes or carries away without lawful authority or consent from any lot of land in any city or incorporated village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil or stone; or,
5. Enters without the consent of the owner or occupant any orchard, fruit garden, vineyard or ground whereon is cultivated any fruit, with intent to take, injure or destroy anything there growing or grown; or,
6. Cuts down, destroys or in any way injures any shrub, tree or vine being or growing within any such orchard, garden, vineyard or upon any such ground, or any building, framework or erection thereon; or,
7. Maliciously injures any ice upon any waters from which ice is taken as an article of merchandise with intent to injure the owner thereof, or enters or skates upon any pond or body of water not navigable, kept and used for the purpose of taking ice therefrom as an article of merchandise, and upon or adjoining which a notice has been placed in a conspicuous position forbidding such entry, and stating the purpose for which said body of water is kept or used, or puts or throws upon or into any such pond or body of water any stick, stone or other substance to the injury of the ice or water; or,
8. Unlawfully takes or carries away or interferes with or disturbs by any means the oyster or other shell fish of another, legally planted upon the bed of any river, bay, sound or water of this state, or removes, pulls up or destroys any stake or buoy designated or marking out any legally planted oyster bed of another is guilty of a misdemeanor; and any oysters planted upon the bed of any waters of this state leased by the commissioners of fisheries shall be deemed legally planted, and evidence that any boat or vessel has been used for the purpose of taking, carrying away or interfering with such oysters shall be presumptive evidence of guilt as against the owner, master or crew of such vessel.
9. Intrudes or places any hovel, shanty or building upon, or within the limits of any lot or piece of land within any incorporated city or village, without the consent of the owner, or within the boundaries of any street or avenue within such city or village; or,
10. Kills, wounds or traps any bird, deer, squirrel, rabbit or other animal within the limits of any cemetery or public burying ground, or of any public park or pleasure ground, or removes the young of any such animal, or the eggs of any such bird, from any cemetery, park or pleasure ground, or exposes for sale, or knowingly buys or sells any bird or animal so killed or taken; or,
11. Drives or leads along a public highway a wild and dangerous animal, or a vehicle or engine propelled by steam, except upon a railroad, along a public highway, or causes or directs such animal, vehicle or engine to be so driven, led, or to be made to

pass, unless a person of mature age shall precede such animal, vehicle or engine by at least one-eighth of a mile, carrying a red light, if in the night time, and gives warning to all persons whom he meets traveling such highway, of the approach of such animal, vehicle or engine; or,

12. Takes or attempts to take, without the consent of the owner of any lake or pond, any fish from the waters thereof, provided such lake or pond is so situated that fish cannot pass thereinto from the waters of any other lake, pond or stream, either public or owned by other persons; or without the consent of the owner of any such lake or pond, places therein any piscivorous fish or any poison or other substance injurious to the health of fish, or lets the water out of any such lake or pond with intent to take fish therefrom or to harm fish therein; or,

13. Injures any arsenal or armory, or its fixtures, or any uniforms, arms or equipments, or other property therein deposited; or,

14. Trespasses upon any rifle range lawfully used by or in connection with the national guard of the state, or any organization, division or district thereof, or who injures any target, or other property situate thereon, or who willfully violates thereon any regulation established to maintain order, preserve property or prevent accident upon such range, or removes, mutilates or destroys a battle flag, book, placard, relic or record deposited or kept in the state military bureau; or,

15. Cuts, spoils or destroys any cordage, cable, buoys, buoy-rope, head-fast or other fast fixed to the anchor or moorings belonging to any vessel, or who shall, with intent to injure, tamper in any way with the lines or cables by which any vessel is moored or made fast, or who shall, with intent to injure, tamper in any manner with the steering-gear, bell-gear, engines, machinery, lights or any other equipments of any vessel, shall be deemed guilty of a misdemeanor.

16. Any person who in any manner, for exhibition or display, shall after the first day of September, nineteen hundred and five, place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature upon any flag, standard, color or ensign of the United States of America or state flag of this state or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature,

or who shall, after the first day of September, nineteen hundred and five, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark or distinguish, the article of substance, on which so placed, or who shall publicly mutilate, deface, defile or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days or both, in the discretion of the court; and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered with costs in a civil action, or suit, in any court having jurisdiction, and such action or suit may be brought by or in the name of any citizen of this state, and such penalty when collected less the reasonable cost and expense of action or suit and recovery to be certified by the district attorney of the county in which the offense is committed shall be paid into the treasury of this state; and two or more penalties may be sued for and recovered in the same action or suit. The words, flag, standard, color or ensign, as used in this subdivision or section, shall include any flag, standard, color, ensign, or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign, of the United States of America, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, or ensign of the United States of America. The possession after September one, nineteen hundred and five, by any person, other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section shall be presumptive evidence that the same is in violation of this section, and was made, done or created after the first day of September, nineteen hundred and five, and that such flag, standard, color, ensign, or article, substance, or thing, did not exist on the first day of September, nineteen hundred and five.

Am'd by ch. 491 of 1888, ch. 497 of 1889, ch. 692 of 1892; added by ch. 692 of 1898; am'd by ch. 164 of 1894, ch. 320 of 1894, ch. 552 of 1896; added

by ch. 552 of 1898; added by ch. 12 of 1899; subd. 16 am'd by ch. 273 of 1903, ch. 80 of 1906, and ch. 440 of 1906.
See § 195, 196, 467, 537, 646, Penal Code; § 56, subds. 4, 18, 24, Code Crim. Pro.
What is necessary to establish. Anderson v. How, 116 N. Y. 386; 26 N. Y. St. Rep. 790.
Subd. 8. Object of enactment. People v. Decker, 32 N. Y. St. Rep. 967; 10 N. Y. Supp. 676.
Subd. 9. People v. Upton, 29 N. Y. St. Rep. 778; 9 N. Y. Supp. 688.
Subd. 16. People ex rel. McPike v. Van De Carr, 178 N. Y. 425, aff'd 91 App. Div. 20.
See also O'Donnell v. McIntyre, 16 Abb. N. C. 87; Rice v. Buffalo Steel House Co., 17 App. Div. 464; Mullin v. Village of Glens Falls, 11 App. Div. 279; Comfort v. Fulton, 39 Barb. 56; People v. Smith, 5 Cow. 258; People v. Moody, 5 Park. 568; People v. How, 7 Barb. 9; Wait v. Green, 5 Park. 185; Thaule v. Krekeler, 81 N. Y. 428; Fagan v. Knox, 66 N. Y. 525; Marks v. Townsend, 97 N. Y. 500; Kilpatrick v. People, 5 Den. 277; Heine v. Blair, 62 N. Y. 24; Bulkeley v. Ketallas, 6 N. Y. 384.

§ 640a. Trespasses on Indian land.

A person who cuts, removes, causes to be removed or aids or assists in removing from the Alleghany, Cattaraugus, Tonawanda or Onondaga reservations any wood, trees, timber, bark or poles, except as authorized by law, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 640b. Trespasses on Onondaga reservation.

A person, other than an Onondaga Indian, who cuts or removes from the Onondaga reservation any tree, timber, wood, bark or poles; or an Indian who cuts for the purpose of sale or removal from such reservation, or who removes, causes to be removed or aids in the removal from such reservation of any tree, timber, wood, bark or poles, except on the written permission of a majority of the chiefs of the Onondaga tribe, particularly specifying the quantity and kind of trees, timber, wood, bark or poles to be cut or removed, is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 640c. Cutting ice in front of premises of another.

A person who takes possession of or cuts ice in front of the lands of another on any water except lakes, ponds, the Hudson and Mohawk rivers and the tide-waters of Rondout and Catskill creeks, between the center of such body of water and such lands, after the owner or occupant has posted in a conspicuous manner upon such lands near the banks of such waters a written or printed notice of his desire to cut ice in front of such lands; or

2. Trespasses upon or takes such ice or any part thereof for commercial purposes; or

3. Willfully removes any such notice; is guilty of a misdemeanor.

Added by ch. 692 of 1893.

§ 640d. Offering real property for sale without written authority.

Repealed by ch. 516 of 1906.

Unconstitutional. Fisher Co. v. Woods, 187 N. Y. 90.

§ 640e. Applying for a loan on real property without written authority.

In cities of the first and second class, any person who shall make application to any other person, or to any corporation, for a loan upon any real property without the written authority of the owner of such real property, or of his attorney in fact, appointed in writing, or of a person who has made a written contract for the purchase of such property with the owner thereof, shall be guilty of a misdemeanor.

Added by ch. 128, of 1901. In effect Sept. 1, 1901.

§ 641. Divulging, etc., telegram, a misdemeanor.

A person who, either

1. Wrongfully obtains, or attempts to obtain, any knowledge of a telegraphic or telephonic message by connivance with a clerk, operator, messenger, or other employe of a telegraph or telephone company; or

2. Being such clerk, operator, messenger, or other employe, willfully divulges to any one but the persons for whom it was intended, the contents or the nature thereof of a telegraphic or telephonic message or dispatch intrusted to him for the transmission or delivery, or of which contents he may in any manner become possessed, or occupying such position in a telegraph office shall willfully refuse or neglect duly to transmit or deliver messages received at such office, except when such telegraphic or telephonic message or dispatch is in aid of or used to abet or carry on any unlawful business or traffic, or to perpetrate any criminal offense, and when it shall appear that any offense at law or unlawful business or traffic is being carried on or conducted in whole or in part by means of a telegraphic or telephonic message or dispatch, it shall be the duty of any corporation or employe having knowledge of the same, to withhold such dispatch from delivery, and to further furnish

to any public officer whose duty it is to prosecute any offense at law so aided and abetted, all information in their possession, relating to said unlawful business or traffic; and to further assist in the identification of any person aiding or abetting in or conducting any such unlawful business or traffic; and any violation of this act, or refusal or neglect, to furnish information as provided hereinbefore, is punishable by a fine of not more than one thousand dollars, or by imprisonment for not more than two years, or by both such fine and imprisonment.

Am'd by ch. 727 of 1895 and ch. 661 of 1901.

§ 642. Opening or publishing a letter, et cetera.

A person who wilfully, and without authority, either

1. Opens or reads, or causes to be opened or read, a sealed letter, telegram, or private paper; or

2. Publishes the whole or any portion of such a letter, or telegram, or private paper, knowing it to have been opened or read without authority; or

3. Takes a letter, telegram or private paper, belonging to another, or a copy thereof, and publishes the whole or any portion thereof; or

4. Publishes the whole or any portion of such letter, telegram, or private paper, knowing it to have been taken or copied without authority; or

5. Publishes or causes to be published, or connives at the publication of any letter, telegram, or private paper or of any portion of any letter, telegram, or private paper found on, or among the effects of, any person who has been dangerously wounded, or who has committed suicide, or who has died suddenly, or who has been found dead, unless such letter, telegram, or private paper shall have been produced pursuant to law before a coroner at an inquest, and the publication of such letter, telegram, or private paper, or of such portion of such letter, telegram, or private paper shall have been declared by that coroner in writing to be necessary to aid in the discovery of a crime, or of the identity of the wounded or deceased person; or

6. Any person having or obtaining access, either with or without the consent of the lawful owner, to any original list, compilation or other collection of the names of customers or subscribers not less than five hundred in number, or to any other original list, compilation or other collection of names not less than five hundred in number, used in connection with any lawful business or occupation whatsoever, and who, without the consent of such lawful owner, shall take possession of any such original list, compilation, or other collection, or any part thereof, or shall make or cause to

be made, or take possession of, a copy or duplication thereof, or of any part thereof, or who shall aid, abet or incite any other person to take or to copy or to cause to be copied or taken, any such list, compilation or collection, or any part thereof; or

7. Any person who may have heretofore obtained or may hereafter obtain any such list, compilation or other collection specified in subdivision six hereof, or any part thereof, or any copy or duplication of such list, compilation or collection or any part thereof, or the information contained in any such list, compilation, collection or any part thereof, and who, without the consent of the lawful owner of the original of any such list, compilation or collection, and with notice or knowledge of his rights, may at any time hereafter, make use of or attempt to make use of any such list, compilation or collection, or any part thereof, or of any copy or duplication of the whole or any part thereof, or of the information contained in any such list, compilation, collection or copy or duplication or any part thereof, for his own benefit or advantage, or that of any person other than said lawful owner,

Is guilty of a misdemeanor.

Am'd by ch. 287 of 1895, ch. 588 of 1900, and ch. 441 of 1905.
McCormack v. Perry, 47 Hun, 71; 14 N. Y. St. Rep. 154.

§ 643. Affixing advertisement to another's land, etc., how punished.

A person who places upon or affixes to, or causes or procures to be placed upon or affixed to, real property not his own, or a rock, tree, wall, fence, or other structure thereupon, without the consent of the owner, any words, characters, or device, as a notice of, or reference to, any article, business, exhibition, profession, matter of event, is punishable by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both.

§ 644. Presumptive evidence against certain persons.

The placing or affixing of any words, characters, device, or notice, of any article, business or other thing, to or upon any property or place specified in the last section, is presumptive evidence that the proprietor, vendor, or exhibitor thereof caused or procured the same to be so placed or affixed.

§ 645. Endangering life by maliciously placing explosive near building.

A person, who places in, upon, under, against, or near to, any

building, car, vessel or structure, gunpowder or any other explosive substance, with intent to destroy, throw down, or injure the whole or any part thereof, under such circumstaness, that, if the intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony.

See §§ 201, 636, ante.

§ 646. Malicious injury to standing crops, when a misdemeanor.

A person, who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which punishment is not otherwise prescribed by this Code or by some other statute, is guilty of a misdemeanor.

See § 64, ante.

People v. Upton, 9 N. Y. Supp. 684; 29 N. Y. St. Rep. 778.

§ 647. Removal of books and works of art from library; willful injury of works of art, ornamental trees, etc.

Any person who,

1. Removes or assists in removing any book, manuscript, map, print, coin, medal, printing or other literary article or work of art from the library building of any reference library company, except for its preservation or repair, or for the purpose of its deposit in some other building of the company, or, being a trustee or officer of such company, consents to the removal thereof; or, upon such removal refuses to permit the same to be restored; or,

2. Not being the owner thereof, and without lawful authority, willfully injures, disfigures, removes or destroys a gravestone, monument, work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, whether situated upon private grounds or upon the street, road or sidewalk, cemetery or public park or place, or removes from any grave in a cemetery any flowers, memorials or other tokens of affection, or other thing connected with them,

Is guilty of a misdemeanor.

Am'd by ch. 692 of 1892.

People v. Richards, 108 N. Y. 137; 18 N. Y. St. Rep. 515, rev'd 7 N. Y. St. Rep. 656; 5 N. Y. Cr. Rep. 355; 44 Hun, 278.

§ 648. Malicious injury to certain articles in museum, etc., how punished.

A person who willfully or maliciously cuts, tears, defaces, disfigures, soils, obliterates, breaks or destroys, a book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen, or other work of literature or object of art, or curiosity, deposited in a public library, gallery, museum, collection, fair, or exhibition, or in a library, gallery, museum, collection or exhibition belonging to any incorporated college or university or to any other incorporated institution devoted to educational, scientific, literary, artistic, historical or charitable purposes, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Am'd by ch. 406 of 1907.

See § 14, ante.

§ 649. Destroying or delay of election returns.

A messenger appointed by authority of law to receive and carry a report, certificate or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law; and a person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who willfully does any injury or other act in this section specified, is punishable by imprisonment in a state prison not exceeding five years.

Am'd by ch. 662 of 1892.

See § 94, ante.

People v. Wise, 2 How. (N. S.) 92; 3 N. Y. Cr. Rep. 303.

§ 650. Property in house of worship, etc.

A person who, willfully and without authority, breaks, defaces or otherwise injures any house of religious worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

See § 14, ante.

§ 651. Unlawful interference with gas or electric meters or steam valves.

A person who willfully with intent to injure or defraud:

1. Connects a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for the conducting or supplying illuminating gas, fuel, natural gas or electricity in such a manner as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or instrument provided for registering the quantity consumed or uses, such gas or electricity obtained by reason of the making of such connections; or

2. Obstructs, alters, injures or prevents the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas or electricity consumed in a house or apartment, or at an orifice or burner, lamp or motor, or by a consumer or other person or a person other than a state inspector or deputy inspector of gas meters or an employee of the company owning any gas or electric meter, who willfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any such meter so detached or disconnected; or

3. In any manner whatever, changes, extends or alters any service or other pipe, wire or attachment of any kind, connecting or through which natural or artificial gas or electricity is furnished from the gas mains or pipes or wires of any person, company or corporation without first procuring from said person, company or corporation written permission to make such change, extension or alterations, or uses gas or electricity obtained by reason of such changes, extensions or alterations without first procuring the written permission aforesaid; or

4. Makes any connection or reconnection with the gas mains, service pipes or wires of any person, company or corporation furnishing to consumers natural or artificial gas or electricity, or turns on or off or in any manner interferes with any valve or stop-cock or other appliances belonging to such person, company or corporation and connected with its service or other pipes or wires, or enlarges the orifice of mixers, or uses natural gas for heating purposes except through mixers, or uses electricity or artificial gas for any purpose, before it has passed

through an instrument for measuring the quantity consumed, without first procuring from such person, company or corporation a written permit to turn on or off such stop-cock or valve, or to make such connections or reconNECTIONS, or to enlarge the orifice or mixers or to use for heating purposes without mixers, or to interfere with the valves, stop-cocks, wires, or other appliances of such person, company or corporation as the case may be; or

5. Retains possession of or refuses to deliver any mixer or mixers, meter or meters, lamp or lamps, or other appliances which may be or may have been loaned or rented to them by any person, company or corporation for the purpose of furnishing, gas electricity or power through the same, or who sells, loans or in any manner disposes of the same to any person or persons other than the said person, company or corporation entitled to the possession of the same; or

6. Sets on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person, company or corporation, in conveying gas to consumers, or interferes in any manner with the wells, pipes, mains, gate-boxes, valves, stop-cocks, wires, cables, conduits, or any other appliances, machinery or property of any person, company or corporation engaged in furnishing gas to consumers unless employed by or acting under the authority and direction of such person, company or corporation; or

7. Opens or causes to be opened or reconnects or causes to be reconnected any valve lawfully closed or disconnected by a district steam corporation; or

8. Turns on steam or causes it to be turned on, or to re-enter any premises when the same has been lawfully stopped from entering such premises, is guilty of a misdemeanor.

Am'd by ch. 219 of 1888, ch. 692 and ch. 699 of 1892, ch. 692 of 1893, ch. 589 of 1900 and ch. 453 of 1906.

See § 15, ante.

People v. McTameney, 30 Hun, 505; 1 N. Y. Cr. Rep. 437; 66 How. 73; 13 Abb. N. C. 59; *Langley v. East River Gas Co.*, 41 App. Div. 470; *In re Hallenbeck*, 65 How. Pr. 401; 1 N. Y. Cr. Rep. 437.

§ 651a. Unlawful interference with water meters, water service pipes and their connections.

A person who, wilfully, with intent to injure or defraud:

1. Breaks or defaces, or causes to be broken or defaced, the seal of a water meter; or

2. Obstructs, alters, injures or prevents, or causes to be obstructed, altered, injured or prevented, the action of any such meter or other instrument used to measure or register the quantity of water supplied to or consumed by any person, corporation or company; or

3. Makes or causes to be made any connection by means of pipe, conduit or otherwise with the water main or service pipe of any person, corporation or company furnishing water to consumers, in such manner as to take water from said main or service

pipe without its passing through the meter or other instrument provided for registering or measuring the amount or quantity of water taken from said main or service pipe; or

4. Makes any connection or reconnection with the water main or service pipe of any person, corporation or company furnishing water to consumers, or turns on or off, or in any manner interferes with any valve, stop-cock or other appliance belonging to said person, corporation or company, without obtaining from such person, corporation or company a written permit to make such connection or reconnection or to turn or otherwise interfere with said valve, stop-cock or other appliance; or

5. Prevents, by the erection of any devise or construction, or by any other means, free access to any such meter by the person, company or corporation furnishing such water; or interferes, obstructs or prevents, by any means, the reading or inspection of such meter, is guilty of a misdemeanor.

Added by ch. 333 of 1902.

§ 652. Driving vehicles, etc., on sidewalks.

A person who willfully and without authority or necessity, drives any team, vehicle, cattle, sheep, horse, swine or other animal along upon a sidewalk is punishable by a fine of fifty dollars, or imprisonment in the county jail not exceeding thirty days, or both.

Subdivision 1. A person who willfully and without authority or necessity drives any team or vehicle, except a bicycle, upon a side-path, or wheelway, constructed by or exclusively for the use of bicyclists, and not constructed in a street of a city, is punishable by a fine of not more than fifty dollars, or imprisonment not exceeding thirty days, or both.

Am'd by ch. 287 of 1897.

People v. Meyer, 26 Misc. 118; Fisher v. Village of Cambridge, 133 N. Y. 527; 44 N. Y. St. Rep. 317, rev'd 57 Hun, 300; 32 N. Y. St. Rep. 492; 10 N. Y. Supp. 623; Rauenstein v. N. Y., L. & W. R. R. Co., 47 N. Y. St. Rep. 140; Lechner v. Village of Newark, 19 Misc. 454.

§ 652a. Riding bicycle on sidewalk or foot-path.

A person who willfully and without authority rides a bicycle upon a sidewalk or foot-path constructed, maintained, or allowed to remain for the exclusive use of pedestrians, in any street where a sidepath for bicycles is maintained outside of an incorporated city or village, is guilty of a misdemeanor, punishable by a fine of not more than twenty-five dollars, or by imprisonment for not more than twenty days, or both.

Added by ch. 560 of 1901.

§ 653. Coercing another person, a misdemeanor.

A person, who with a view to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully,

1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property, or threatens such violence or injury: or

2. Deprives any such person of any tool, implement, or clothing, or hinders him in the use thereof; or

3. Uses or attempts the intimidation of such person by threats or force;

Is guilty of a misdemeanor.

Am'd by ch. 384 of 1882.

See § 188, subd. 5, and § 673, Penal Code.

People v. Crotty, 30 N. Y. St. Rep. 46; 9 N. Y. Supp. 937; People v. Lenhardt, 4 N. Y. Cr. Rep. 317, 326.

§ 654. Injury to other property, how punished.

A person who unlawfully and willfully destroys or injures any real or personal property of another, or who without authority or permission from a person who has the right to give such authority or permission, loosens any brake or blocking of any car standing on any railroad track in this state, or without like authority or permission, puts upon or runs any hand car, or other car, on any railroad track in this state, or without like authority or permission, interferes or meddles with any brake or coupling of any car while standing or moving on any railroad track in this state, or takes any part therein, in a case where the punishment is not specially prescribed by statute, is punishable as follows:

1. If the value of the property destroyed, or the diminution in the value of the property by the injury is more than twenty-five dollars, by imprisonment for not more than four years.

2. In any other case, by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

3. And in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof.

Am'd by ch. 186 of 1892.

See § 640, ante.

Killing a horse. People v. Woodward, 31 Hun, 58; 2 N. Y. Cr. Rep. 37.

Application of section. Van Hoffman v. Kendall, 44 N. Y. St. Rep. 485; 17 N. Y. Supp. 713.

Civil action. Treble damages. Layton et al. v. McConnell, 61 App. Div. 447.

Intent. People v. Kane, 142 N. Y. 366; 131 N. Y. 113; 42 N. Y. St. Rep. 722, rev'g 39 N. Y. St. Rep. 752; 15 N. Y. Supp. 612; People v. Christy, 65 Hun, 350; 47 N. Y. St. Rep. 926; 20 N. Y. Supp. 278; Wrench v. Samenfeld, 47 N. Y. St. Rep. 379.

What term "personal property" includes. People v. Woodward, *supra*; People v. Smith, 5 Cow. 258; Bump v. Betts, 19 Wend. 421.

See also People v. Bosworth, 64 Hun, 78; 45 N. Y. St. Rep. 516; 19 N. Y. Supp. 117; Matter of Brownell Street, 44 N. Y. St. Rep. 485; Krauskopf v. Tallman, 38 App. Div. 279; Hewitt v. Newburger, 141 N. Y. 541; People v. Knatt, 156 N. Y. 305; Prignitz v. McTiernan, 18 Misc. 652; People v. Moody, 5 Park. 568; Witcham v. Thomas, 50 N. Y. St. Rep. 885; Wait v. Green, 5 Park. 185.

§ 654a. Throwing any substance on highway to injure cycle.

Whoever with intent to prevent the free use of a cycle thereon, shall throw, drop or place, or shall cause or procure to be thrown, dropped or placed, in or upon any cycle path, avenue, street, sidewalk, alley, road, highway or public way or place, any glass, tacks, nails, pieces of metal, brier, thorn or other substance which might injure or puncture any tire used on a cycle, or which might wound, disable or injure any person using such cycle, shall be guilty of a misdemeanor and on conviction be fined not less than five nor more than fifty dollars.

Added by ch. 304 of 1896.

Lechner v. Village of Newark, 19 Misc. 455.

TITLE XVI.

Cruelty to Animals.

- Sec. 655. Overdriving animal; failing to provide proper sustenance.**
- 656. Abandonment of disabled animal.
 - 657. Failure to provide proper food and drink to impounded animal.
 - 658. Selling or offering to sell or exposing disabled animal.
 - 659. Carrying animal in a cruel manner, a misdemeanor.
 - 660. Animal wantonly poisoned, or attempted to be poisoned, a misdemeanor.
 - 661. Throwing substance injurious to animals in public place, a misdemeanor.
 - 662. Keeping milch cows in unhealthy places and feeding them with food producing unwholesome milk, a misdemeanor.
 - 663. Transporting animals for more than twenty-four consecutive hours, a misdemeanor.
 - 664. Setting on foot fights between birds and animals, a misdemeanor.
 - 665. Keeping, etc., a place where animals are fought, a misdemeanor.
 - 666. Running horses on highway, a misdemeanor.
 - 667. Leaving state to elude provisions of this title.
 - 668. Fines and penalties to be paid over to certain societies.
 - 669. Definitions.

§ 655. Overdriving animal; failing to provide proper sustenance.

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

See § 56, subd. 27, Code Crim. Pro.

People v. Christy, 65 Hun, 350; 20 N. Y. Supp. 279; 8 N. Y. Cr. Rep. 482; 47 N. Y. St. Rep. 925; Davis v. Society, etc., 75 N. Y. 362; 16 Abb. (N. S.) 73; Rutherford v. Krause, 8 Misc. 548; People v. Tinsdale, 10 Abb. (N. S.) 374; Broadway Stage Co. v. Am. Society, etc., 15 Abb. Pr. (N. S.) 51; Warren v. Perry, 14 Hun, 337; Stage horse cases, 15 Abb. Pr. (N. S.) 59; People v. Brunell, 48 How. Pr. 435; Lashine's case, 4 C. H. Rec. 28; People v. Special Sessions, 4 Hun, 441; Morris' case, 6 C. H. Rec. 62; People ex rel. Walker v. Court, etc., 4 Hun, 445; Boas' case, 3 C. H. Rec. 191.

§ 656. Abandonment of disabled animal.

A person being the owner or possessor, or having charge or custody of a maimed, diseased, disabled or infirm animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows it to lie in a public street, road or public place more than three hours after he receives notice that it

is left disabled, is guilty of a misdemeanor. Any agent or officer of the American Society for the Prevention of Cruelty to Animals, or of any society duly incorporated for that purpose, or any police officer, may lawfully destroy or cause to be destroyed any animal found abandoned and not properly cared for, appearing in the judgment of two reputable citizens called by him to view the same in his presence, to be slandered, injured or diseased past recovery for any useful purpose; or after such agent or officer has obtained in writing from the owner of such animal his consent to such destruction. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place of custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon.

Am'd by chs. 144 and 490 of 1888, and ch. 192 of 1907.

Sahr v. Scholle, 89 Hun, 43; People v. Christy, 65 Hun, 351; 47 N. Y. St. Rep. 926; 20 N. Y. Supp. 279.

§ 657. Failure to provide proper food and drink to impounded animal.

A person who having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor.

§ 658. Selling or offering to sell or exposing disabled animal.

A person who willfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is diseased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, is guilty of a misdemeanor.

Fisher v. Clark, 41 Barb. 829.

§ 659. Carrying animal in a cruel manner, a misdemeanor.

A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

See § 663, post.

§ 660. Animal wantonly poisoned or attempted to be poisoned, a misdemeanor.

A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an

animal, whether such animal be the property of himself or another, is guilty of a misdemeanor.

See § 56, subds. 27, 31, Code Crim. Pro.

People v. Christy, 65 Hun, 351; 47 N. Y. St. Rep. 926; 20 N. Y. Supp. 279;

People v. Knatt, 156 N. Y. 302.

§ 661. Throwing substance injurious to animals in public place, a misdemeanor.

A person who willfully throws, drops or places, or causes to be thrown, dropped or placed, upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal, is guilty of a misdemeanor.

Am'd by ch. 523 of 1885.

People v. Sheridan, 15 N. Y. St. Rep. 939; 1 N. Y. Supp. 61.

§ 662. Keeping milk cows in unhealthy places, and feeding them with food producing unwholesome milk, a misdemeanor.

A person who keeps a cow or any animal for the production of milk, in a crowded or unhealthy place, or in a diseased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is punishable by a fine not less than fifty dollars, or imprisonment not exceeding one year, or by both.

§ 663. Transporting animals for more than twenty-four consecutive hours, a misdemeanor.

A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-four consecutive hours, without unloading for rest, water and feeding, during ten consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed. If the owner, agent, consignee, or other person in charge of any such animals refuses or neglects upon demand to pay for the care or feed of the animals while so unloaded or rested, the railway company, or other carriers thereof, may charge the expense thereof to the owner or consignee and shall have a lien thereon for such expense.

Hastings v. N. Y., O. & W. R. Co., 25 N. Y. St. Rep. 251; 6 N. Y. Supp. 837; 8 Silv. (Sup. Ct.) 424.

§ 664. Setting on foot fights between birds and animals, a misdemeanor.

A person who sets on foot, instigates, promotes, or carries on, or does any act as assistant, umpire, or principal, or is a witness of, or in any way aids in or engages in the furtherance of any fight between cocks or other birds, or dogs, bulls, bears, or other

animals, premeditated by any person owning, or having custody of such birds or animals, is guilty of a misdemeanor punishable by fine not less than ten dollars, nor more than one thousand dollars, or by imprisonment not less than ten days nor more than one year, or both.

§ 665. Keeping, etc., a place where animals are fought, a misdemeanor.

A person who keeps or uses, or is in any manner connected with, or interested in the management of, or receives money for the admission of any person to a house, apartment, pit or place kept or used for baiting or fighting any bird or animal, and any owner or occupant of a house, apartment, pit or place who willfully procures or permits the same to be used or occupied for such baiting or fighting, is guilty of a misdemeanor. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law.

Am'd by ch. 144 of 1888.

People v. Klock, 48 Hun, 275; 16 N. Y. St. Rep. 565.

§ 666. Running horses on highway, a misdemeanor.

A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes, or permits them to run, is guilty of a misdemeanor.

Am'd by ch. 268 of 1902, and ch. 539 of 1904.

See §§ 56, 57, Code Crim. Pro.

Automobile. People v. Ellis, 88 App. Div. 471.

People v. Patterson, 38 Misc. 79.

§ 667. Leaving state to elude provisions of this title.

A person who leaves this state with intent to elude any of the provisions of this title or to commit any act out of this state which is prohibited by them, or who being a resident of this state, does any act without this state, pursuant to such intent, which would be punishable under such provisions, if committed within this state, is punishable in the same manner as if such act had been committed within this state.

§ 668. Fines and penalties to be paid over to certain societies.

All fines, penalties or forfeitures imposed or collected for a violation of the provisions of this title, or of any act for the prevention of cruelty to animals, now in force or hereafter passed, must be paid on demand to the American Society for the Prevention of Cruelty to Animals; except where the prosecution shall be instituted or conducted by a society for the prevention of cruelty to animals duly incorporated under the general laws of this state, in

which case such fine, penalty or forfeiture must be paid on demand to such society. A constable or police officer must, and any agent or officer of any of said societies may, arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this title. Any officer or agent of any of said societies may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall interfere with or obstruct any such officer or agent in the discharge of his duty shall be guilty of a misdemeanor. Any of said societies may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting animals, and may aid in presenting the law and facts before such court, tribunal, or magistrate in any proceeding taken. The officers and agents of all duly incorporated societies for the prevention of cruelty to animals or children are hereby declared to be peace officers within the provisions of section one hundred and fifty-four of the Code of Criminal Procedure.

Am'd by ch. 144 of 1888 and ch. 490 of 1888.

American Society v. City of Gloversville, 78 Hun, 41; Fox v. Mohawk & Hudson River Humane Soc., 20 Misc. 407; 25 App. Div. 31, 33; American Society, etc. v. Cohoes, 4 N. Y. St. Rep. 808; 25 Week. Dig. 229; People v. Sickles, 26 App. Div. 470; Stage Horse cases, 15 Abb. Pr. (N. S.) 59.

§ 669. Definitions.

1. The word "animal," as used in this title, does not include the human race, but includes every other living creature;
2. The word "torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted;
3. The words "impure and unwholesome milk" include all milk obtained from animals in a diseased or unhealthy condition, or who are fed on distillery waste, usually called "swill" or upon any substance in a state of putrefaction or fermentation.

Rutherford v. Krause, 8 Misc. 548; People v. Cipperly, 101 N. Y. 634, rev'd 87 Hun, 320; 4 N. Y. Cr. Rep. 69; People v. Klock, 48 Hun, 277; 16 N. Y. St. Rep. 565; People v. Nobles, 1 N. Y. Cr. Rep. 459; People v. Schaeffer, 41 Hun, 23; 2 N. Y. St. Rep. 705.

TITLE XVII.

Of Miscellaneous Crimes.

- Sec. 670. Attorneys forbidden to defend criminal prosecutions carried on by their partners or formerly by themselves.**
671. Attorneys may defend themselves.
672. Fraudulently presenting bills or claims to public officers for payment.
673. Endangering life by refusal to labor.
674. Publishing false messages.
- 674a. Unauthorized wearing or use of badges, name, title, etc., of certain orders and societies.
- 674b. Converting military property; unlawfully wearing uniform.
- 674c. Introduction of spirituous or malt liquors into arsenal or armory.
- 674d. Unlawfully exacting toll of a member of the national guard.
- 674e. Failure to respond to military duty.
- 674f. Selling tickets for balls and entertainments.
- 674g. Damaging or destroying life-preservers, etc.
675. Acts not expressly forbidden.
- 675a. Unlawful removal of poor person.
676. Acts committed out of the state.

§ 670. Attorneys forbidden to defend criminal prosecutions carried on by their partners or formerly by themselves.

An attorney, who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by a person as district attorney or other public prosecutor, with whom such attorney is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court, as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise; or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor.

See §§ 136, 139, 148, 149, ante.
People v. Coombs, 158 N. Y. 532.

§ 671. Attorneys may defend themselves.

The last section does not affect § 78, 79, 80 and 81 of the Code of Civil Procedure, and does not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 672. Fraudulently presenting bills or claims to public officers for payment.

A person who, knowingly, with intent to defraud, presents, for audit, or allowance, or for payment, to any officer or board of officers of the state, or of any county, town, city, or village, au-

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thorized to audit, or allow or to pay bills, claims or charges, any false or fraudulent claim, bill, account, writing or voucher, or any bill, account or demand, containing false or fraudulent charges, items or claims, is guilty of a felony.

See §§ 165, 166, ante.

People v. Bragle, 88 N. Y. 585; 63 How. Pr. 143; 10 Abb. N. C. 300; People v. Klipfel, 160 N. Y. 376; 37 App. Div. 226; People v. King, 19 Misc. 98; O'Reilly v. People, 86 N. Y. 154; 24 Alb. L. J. 312; People v. Stock, 21 Misc. 148; People ex rel. Phelps v. O. & T., 83 N. Y. 486; People v. Coombs, 158 N. Y. 536.

§ 673. Endangering life by refusal to labor.

A person who willfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing or having reasonable cause to believe, that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor.

See §§ 168, 170, 653, ante.

People v. Baroness, 45 N. Y. St. Rep. 248; 8 N. Y. Cr. Rep. 876, rev'd 61 Hun, 577; 16 N. Y. Supp. 439; 8 N. Y. Cr. Rep. 234; 41 N. Y. St. Rep. 659.

§ 674. Publishing false messages.

A person who prints, publishes or circulates, as true, any message, order or proclamation purporting to be the message, order or proclamation of the executive of the United States or of this state, or of any other state of the United States now or hereafter admitted, or of any territory of the United States, knowing the same not to be genuine, is punishable by imprisonment in a state prison not exceeding five years, or by fine not exceeding one thousand dollars, or by both. An indictment for this offense may be found in any county in which the message, address or proclamation is printed, published or circulated, but not in more than one county of the state.

§ 674a. Unauthorized wearing or use of badges, name, title or officers, insignia, ritual or ceremonies of certain orders and societies.

Any person who wilfully wears the badge or the button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or of the Military Order of Foreign Wars of the United States, or the badge or button of the Spanish war veterans, or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of any society, order or organization, of ten years' standing in the state of New York, or uses the same to obtain aid or assistance within this state, or wilfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor.

Added by ch. 602 of 1893; am'd by ch. 605 of 1894, ch. 386 of 1896, ch. 1002 of 1896, ch. 184 of 1899, ch. 508 of 1900, and ch. 590 of 1905.

§ 674b. Converting military property; unlawfully wearing uniform.

Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms or equipments, issued under the provisions of the Military Code, and any person not a member of the national guard, except members of organizations specially authorized to do so by the Military Code, who shall wear any uniform or designation of grade similar to those in use by the national guard, issued or authorized under the provisions of said code, is guilty of a misdemeanor.

Added by ch. 551 of 1894.

§ 674c. Introduction of spirituous or malt liquors into arsenal or armory.

Any person who introduces any wine, spirituous or malt liquors into any arsenal or armory, except when prescribed for medicinal purposes by a medical officer of the national guard, is guilty of a misdemeanor.

Added by ch. 551 of 1894.

§ 674d. Unlawfully exacting toll of a member of the national guard.

Any person, master or keeper of a toll-gate, toll-bridge or ferry, or any person in charge thereof who willfully hinders or delays any member of the national guard or refuses free passage to any such member going to or returning from any parade, encampment, drill or meeting which he may be by law required to attend, or willfully hinders, delays or refuses free passage to any conveyance or military property of the state in charge of a member of said guard, is guilty of a misdemeanor.

Added by ch. 551 of 1894.

§ 674e. Failure to respond to military duty.

Every member of an independent military organization not regularly organized as an organization of the national guard, who fails to respond or to do military duty, or refuses to enlist when lawfully called upon to do so by the commander-in-chief, in cases of emergency or necessity, is guilty of a misdemeanor.

Added by ch. 551 of 1894.

§ 674f. Selling tickets for balls and entertainments.

Any person who shall collect money or attempt to collect money or any valuable article, or to sell tickets for any ball or entertainment for the benefit of any pretended benevolent, humane, or charitable organization, which has no corporate existence, or for any benevolent, humane, or charitable institution, that has been duly incorporated or recognized by the authorities of the state of New York, without first having obtained written authority of the officers of the said institution or organization, attested under the

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seal of the said institution, according to its rules, shall be guilty of a misdemeanor.

Added by ch. 327 of 1899.

§ 674g. Damaging or destroying life-preservers, etc.

Any person molesting, damaging, destroying, stealing, or in any way wrongfully withholding or interfering with the life-booms, life-ladders, rubber or cork life-preservers, boats, or other life-saving apparatus, or of the flags, pennants, signs, badges of office, buttons or medals of any humane or life-saving association of the state of New York, shall be guilty of a misdemeanor.

Added by ch. 327 of 1899.

§ 675. Acts not expressly forbidden.

Any person who shall by any offensive or disorderly act or language, annoy or interfere with any person or persons in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat or conveyance, by any disorderly act, language, or display, although such act, conduct or display may not amount to an assault or battery, shall be deemed guilty of a misdemeanor. A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this Code, is guilty of a misdemeanor; but nothing in this Code contained shall be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered.

Am'd by ch. 384 of 1882 and ch. 327 of 1891.

See § 170, ante.

Authorized persons to demand increase of wages. *Reynolds v. Everett*, 67 Hun, 304; 22 N. Y. Supp. 313; 50 N. Y. St. Rep. 897.

See also *People v. Marx*, 99 N. Y. 377; *People v. Richards*, 108 N. Y. 137; 13 N. Y. St. Rep. 515, rev'd 44 Hun, 278; 7 N. Y. St. Rep. 656; 5 N. Y. Cr. Rep. 355; *People v. Baroness*, 45 N. Y. St. Rep. 248; 8 N. Y. Cr. Rep. 876, rev'd 61 Hun, 577; 15 N. Y. Supp. 439; 41 N. Y. St. Rep. 659; 8 N. Y. Cr. Rep. 234; *People v. Clipperly*, 101 N. Y. 634; *People v. Hislop*, 77 N. Y. 331; *Matter of Jacobs*, 98 N. Y. 98; *People v. Wallace*, 85 App. Div. 170; *People ex rel. Smith v. Van de Carr*, 86 App. Div. 9. Publication of an anarchial article. *People v. Most*, 171 N. Y. 423, aff'd 71 App. Div. 160, aff'd 36 Misc. 139.

Annoyance to a person in a public place. *People v. St. Clair*, 90 App. Div. 239.

Disorderly conduct. *People ex rel. Clark v. Keeper*, 176 N. Y. 465, aff'd 80 App. Div. 448.

Shadowing. *People v. Weiler*, 179 N. Y. 46, rev'd 89 App. Div. 611.

Playing "craps." *People v. McDermott*, 111 App. Div. 380.

§ 675a. Unlawful removal of poor person.

Any person who shall send, remove, or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent per-

son, from any city, town or county, to any other city, town or county without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county, from which he is so sent, removed or brought or enticed to remove, shall be guilty of a misdemeanor, and on conviction, shall be imprisoned not exceeding six months, or fined not exceeding one hundred dollars, or both.

Added by ch. 550 of 1896.

§ 678. Acts committed out of the state.

A person who commits an act without this state which affects persons or property within this state, or the public health, morals, or decency of this state, and which, if committed within this state, would be a crime, is punishable as if the act were committed within this state.

See §§ 16, 678, Penal Code.

People v. Lyon, 99 N. Y. 219, rev'd 88 Hun, 628; 2 N. Y. Cr. Rep. 484.

GENERAL PROVISIONS.

TITLE XVIII.

General Provisions.

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§ 677. When crimes punishable in different ways.

An act of omission which is made criminal and punishable in different ways, by different provisions of law, may be punished under any one of those provisions, but not under more than one; and a conviction or acquittal under one bars a prosecution for the same act or omission under any other provision.

Selling liquor. *People v. Krank*, 110 N. Y. 492; 18 N. Y. St. Rep. 418, rev'd 46 Hun, 632; 12 N. Y. St. Rep. 845.

One transaction may involve several crimes. *People v. Church*, 1 How. Pr. (N. S.) 366.

City ordinances imposing new penalties. *Brooklyn v. Toynbee*, 31 Barb. 282; *Polinsky v. People*, 73 N. Y. 65, aff'd 11 Hun, 390.

Bar. *People ex rel. McDonald v. Keeler*, 99 N. Y. 463, rev'd 32 Hun, 590; 3 N. Y. Cr. Rep. 351.

See also *People v. Christy*, 65 Hun, 352; 47 N. Y. St. Rep. 926; 20 N. Y. Supp. 278; *People v. Stevens*, 13 Wend. 341; *Rogers v. Jones*, 1 Wend. 261; *People ex rel. Van Houton v. Sadler*, 97 N. Y. 146; *Blatchley v. Moses*, 15 Wend. 215.

§ 678. Acts punishable under foreign law.

An act or omission declared punishable by this Code, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this Code.

See § 676, ante.

§ 679. Foreign convictions or acquittal.

Whenever it appears upon the trial of an indictment, that the offense was committed in another state or country, or under such circumstances that the courts of this state or government had jurisdiction thereof, and that the defendant has already been acquitted or convicted on the merits upon a criminal prosecution under the laws of such state, or country, founded upon the act or omission in respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

See § 139, Code Crim. Pro.

§ 680. Contempt, how punishable.

A criminal act is not the less punishable as a crime, because it is also declared to be punishable as a contempt of court.

See § 143, ante.

People ex rel. Sherwin v. Mead, 92 N. Y. 420; **People v. Cole**, 2 N. Y. Cr. Rep. 108; **People ex rel. McDonald v. Keeler**, 99 N. Y. 463, rev'd 32 Hun, 590; 3 N. Y. Cr. Rep. 354; **Matter of McDonald**, 2 N. Y. Cr. Rep. 82.

§ 681. Mitigation of punishment in certain cases.

Where it appears, at the time of passing sentence on a person convicted, that he has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court, passing sentence, may mitigate the punishment to be imposed, in its discretion.

See § 143, ante.

People ex rel. McDonald v. Keeler, 99 N. Y. 463, rev'd 32 Hun, 590; 3 N. Y. Cr. Rep. 351.

§ 682. Rule for punishment of accessory.

When an act or omission is declared by statute to be a misdemeanor, and no punishment for aiding or abetting in the doing thereof is expressly prescribed, every person who aids, or abets another in such act or omission is also guilty of a misdemeanor.

See § 31, ante.

People v. Clark, 14 N. Y. Supp. 649; 8 N. Y. Cr. Rep. 201.

§ 683. Sending letter, when deemed complete.

In the various cases, in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any post-office or other place, or delivered to any person, with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it is received by the person to whom it is addressed.

See §§ 235, 558, 559, ante.

§ 684. Omission to perform duty.

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

See §§ 117, 154, ante.

Darrow v. Family Fund Society, 42 Hun, 249.

§ 685. Attempts to commit crimes.

A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court, in its discretion, discharges the jury and directs the defendant to be tried for the crime itself.

See §§ 34, 35, ante.

People v. Dartmore, 48 Hun, 323; 2 N. Y. Supp. 311; 15 N. Y. St. Rep. 838; People v. Gardner, 144 N. Y. 123; 73 Hun, 68; Darrow v. Family Fund Society, 116 N. Y. 537; 27 N. Y. St. Rep. 477, aff'd 42 Hun, 247; 3 N. Y. St. Rep. 745; People v. Sullivan, 27 Hun, 38; People v. O'Connell, 60 Hun, 113; 38 N. Y. St. Rep. 108; 14 N. Y. Supp. 485.

§ 686. Id.

A person who unsuccessfully attempts to commit a crime is indictable and punishable, unless otherwise specially prescribed by statute, as follows:

1. If the crime attempted is punishable by the death of the offender, or by imprisonment for life, the person convicted of the attempt is punishable by imprisonment for not more than twenty-five years.

2. In any other case, he is punishable by imprisonment for not more than half of the longest term, or by a fine not more than one-half of the largest sum, prescribed upon a conviction for the commission of the offense attempted, or by both such fine and imprisonment.

Am'd by ch. 116 of 1902.

People v. Johnson, 110 N. Y. 141; 16 N. Y. St. Rep. 846, aff'd 46 Hun, 670; 13 N. Y. St. Rep. 48; Darrow v. Family Fund Society, 116 N. Y. 537; 27 N. Y. St. Rep. 477, aff'd 42 Hun, 247; 3 N. Y. St. Rep. 745; People v. O'Connell, 60 Hun, 113; 14 N. Y. Supp. 485; 38 N. Y. St. Rep. 108; People v. Moran, 123 N. Y. 256; 33 N. Y. St. Rep. 398; 8 N. Y. Cr. Rep. 106, rev'd 54 Hun, 279; 27 N. Y. St. Rep. 50; 7 N. Y. Cr. Rep. 336; People v. Phelps, 61 Hun, 117; 15 N. Y. Supp. 442; 39 N. Y. St. Rep. 599; People v. Dartmore, 48 Hun, 323.

§ 687. Restrictions upon preceding sections.

The last section does not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 687a. Indeterminate sentences to state prisons.

A person never before convicted of a crime punishable by imprisonment in the state prison, who is convicted in any court

in this state of a felony, other than murder first or second degree, and sentenced to a state prison, shall be sentenced thereto under an indeterminate sentence, the minimum of which shall not be less than one year, or in case a minimum is fixed by law, not less than such minimum, and the maximum of which shall not be more than the longest period fixed by law for which the crime is punishable of which the offender is convicted. The maximum limit of such sentence shall be so fixed as to expire during either of the following months: April, May, June, July, August, September and October.

Added by ch. 425 of 1901.

Am'd by ch. 282 of 1902, ch. 36 of 1906, and ch. 737 of 1907.

Modified by ch. 187 of 1903.

People ex rel. Schali v. Deyo, 181 N. Y. 425, rev'd 108 App. Div. 126.

Constitutional. People v. Adams, 176 N. Y. 351, aff'd 85 App. Div. 390.

People ex rel. Ammon v. Johnson, 114 App. Div. 876.

§ 688. Second offense.

A person, who, after having been convicted within this state, of a felony, or an attempt to commit a felony, or of petty larceny, or, under the laws of any other state, government, or country, of a crime which, if committed within this state, would be a felony, commits any crime, within this state, is punishable upon conviction of such second offense, as follows:

1. If the subsequent crime is such that, upon a first conviction, the offender might be punished, in the discretion of the court, by imprisonment for life, he must be sentenced to imprisonment in a state prison for life;

2. If the subsequent crime is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than the longest term, nor more than twice the longest term, prescribed upon a first conviction.

Sentence. People v. Raymond, 96 N. Y. 38, aff'd 32 Hun, 123; 2 N. Y. Cr. Rep. 295; 19 Week. Dig. 137.

Presumption. People v. Cook, 45 Hun, 37; 9 N. Y. St. Rep. 412.

Proof. People v. Price, 119 N. Y. 650, aff'd 53 Hun, 189; 6 N. Y. Supp. 835; 24 N. Y. St. Rep. 936; 6 N. Y. Cr. Rep. 144; People v. Reilly, 49 App. Div. 218.

See also People v. Bosworth, 64 Hun, 80; 45 N. Y. St. Rep. 517; 19 N. Y. Supp. 118; People v. Golden, 3 Park, 330; People v. Caesar, 1 Park, 648; Wood v. People, 53 N. Y. 511; People v. Gibson, 5 Hun, 542; People v. Powers, 6 N. Y. 50; People v. Sickles, 156 N. Y. 541.

§ 688a. Sentence upon conviction of fourth felony.

A person who, after having been three times convicted within this state, of felonies or attempts to commit felonies, or under the law of any other state, government or country, of crimes which if committed within this state would be felonies, commits a felony within this state, shall be sentenced upon conviction of such fourth, or subsequent, offense to imprisonment in a state prison for the term of his natural life, but after serving a period of time equal to the maximum penalty prescribed for the offense of which he is convicted, less the usual commutation for good conduct, shall become subject to the jurisdiction of the board of commissioners of paroled prisoners, and may be paroled upon such conditions as said board may prescribe, but said board shall not grant an absolute discharge to such prisoner.

Added by ch. 645 of 1907.

§ 689. Id.

A person who, having been convicted within this state of a misdemeanor, afterwards commits and is convicted of a felony, must be sentenced to imprisonment for the longest term prescribed for the punishment upon a first conviction for the felony.

People v. Bosworth, 84 Hun, 80; 45 N. Y. St. Rep. 517; 19 N. Y. Supp. 118; *Matter of Kenny*, 23 Misc. 13.

§ 690. Habitual criminals.

Where a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this state, of any other crime, or where a person is hereafter convicted of a misdemeanor who has been already five times convicted in this state of a misdemeanor, he may be adjudged by the court, in addition to any other punishment inflicted upon him, to be an habitual criminal.

See § 510, Code Crim. Pro.

Matter of Kenny, 23 Misc. 13; *People ex rel. Sloane v. Fallon*, 27 Misc. 19; *People v. McCarthy*, 45 How. 87; *People v. Sickles*, 26 App. Div. 477.

§ 691. Person, etc., of habitual criminal.

The person of an habitual criminal shall be at all times subject to the supervision of every judicial magistrate of the county, and of the supervisors and overseers of the poor of the town where the criminal may be found, to the same extent that a minor is subject to the control of his parent or guardian.

See § 514, Code Crim. Pro.

§ 692. Effect of pardon.

The governor may grant a pardon which shall relieve from judgment of habitual criminality as from any other sentence; but upon a subsequent conviction for felony of a person so pardoned, a judgment of habitual criminality may be again pronounced on account of the first conviction, notwithstanding such pardon.

People v. Price, 119 N. Y. 650, aff'd 53 Hun, 188; 24 N. Y. St. Rep. 936; 6 N. Y. Supp. 835.

§ 693. Woman concealing birth of issue.

A woman, who, having been convicted of endeavoring to conceal the still birth of any issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death, is punishable by imprisonment in a state prison not exceeding five years, and not less than two years.

See §§ 297, 698, Penal Code.

§ 694. Imprisonment on two or more convictions.

Where a person is convicted of two or more offenses, before sentence has been pronounced upon him for either offense, the imprisonment, to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first or other prior term or terms of imprisonment, to which he is sentenced.

People ex rel. Tweed v. Liscomb, 60 N. Y. 560.

§ 695. Id.

Where a person, under sentence for a felony, afterward commits any other felony, and is thereof convicted and sentenced to another term of imprisonment, the latter term shall not begin until

the expiration of all the terms of imprisonment, to which he is already sentenced.

Thomas v. People, 67 N. Y. 218; Haggerty v. People, 53 N. Y. 642, aff'd 6 Lans. 347.

§ 696. Convict when sentenced for life.

When a crime is declared by statute to be punishable by imprisonment for not less than a specified number of years, and no limit of the duration of the imprisonment is declared, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment during his natural life, or for any number of years not less than the amount prescribed.

When a crime is declared by any of the provisions of this Code to be punishable by imprisonment for not more than a specified number of years, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment for any time less than that prescribed by the provisions of this act.

Am'd by ch. 662 of 1892.

People v. Rourke, 11 Abb. N. C. 89.

§ 697. Calculating term.

When a convict is to be sentenced to imprisonment in a state prison or a penitentiary, the court before which the conviction was had must limit the term of the sentence, having reference to the probability of the convict earning a reduction of his term for good behavior, as provided by chapter twenty-one of the laws of eighteen hundred and eighty-six, and assuming that such reduction will be earned, so that the sentence will expire during either of the following months: April, May, June, July, August, September and October.

But the provisions of this section shall not apply in the following cases:

1. Where the sentence is to be for the term of one year or less.
2. Where the term of imprisonment for the crime of which the convict was convicted absolutely fixes a single definite period of time.
3. Where a judgment of conviction has been affirmed upon an appeal, and it becomes necessary for the court to impose the same sentence as that originally imposed. The officers of every prison or penitentiary are hereby expressly prohibited from taking into their custody any convict sentenced in violation of the provisions of this section, and any convict so illegally sentenced shall be returned by the sheriff of the county where the conviction was had to the court to be re-sentenced in conformity to the provisions of this section. Provided that if it shall appear to the officers of any prison or penitentiary at the time it sought to incarcerate a convict therein that the court which imposed the sentence has adjourned, then it shall be lawful for said officers to receive said convict and hold him in their custody until he can be re-sentenced as herein provided, and the second or re-sentence shall be deemed

to have begun on the date of the convict's reception under his first sentence. The officers of any prison or penitentiary shall, in the case of a convict so illegally sentenced to imprisonment therein, immediately notify the court of their action.

Am'd by ch. 492 of 1888.

Modified by ch. 187 of 1903.

People v. Davis, 46 N. Y. St. Rep. 215; 19 N. Y. Supp. 783; 1 Park. 374;

People v. Trimble, 60 Hun, 364; 38 N. Y. St. Rep. 999; 15 N. Y.

Supp. 61; People ex rel. Schali v. D.yo, 103 App. Div. 126, rev'd 181

N. Y. 425; People ex rel. Ammon v. Johnson, 114 App. Div. 876.

§ 698. Imprisonment of female convict.

Any woman over the age of sixteen years, who shall be convicted of a felony in any of the courts of this state, shall, when the sentence imposed is one year or more, be sentenced to imprisonment in the state prison for women at Auburn. When the sentence imposed is less than one year, she may be committed to the county jail of the county where convicted, or to a penitentiary, or to the state prison for women at Auburn. A woman between the ages of fifteen and thirty, convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may in the discretion of the trial court be sentenced to a house of refuge or reformatory for women, to be there confined under the provisions of law relating to such house of refuge or reformatory.

Am'd by ch. 374 of 1896 and ch. 114 of 1900.

See § 698, ante.

People v. House Refuge, 22 App. Div. 255.

§ 699. Imprisonment of minors.

Where a male person between the ages of sixteen and twenty-one years is convicted of a felony, or where the term of imprisonment of a male convict for a felony is fixed by the trial court at one year or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a state prison, or in the county jail located in the county where sentence is imposed. The commission by a child under the age of sixteen years, of a crime, not capital or punishable by life imprisonment, which if committed by an adult would be a felony, renders such child guilty of a misdemeanor only, but any other person concerned therein, whether as principal or accessory, who otherwise would be punishable as a principal in the felony, shall be punishable as a principal in the same manner as if such child were over sixteen years of age at the time the crime was committed. A conviction of any child under the age of sixteen years of a crime for which, if the child were an adult the penalty for conviction could be ten years imprisonment or less shall not work any penalty or deprivation of any right or privilege except such as is imposed by the court or magistrate in pursuance with such conviction.

Am'd by ch. 496 of 1892, ch. 726 of 1894, ch. 553 of 1896, ch. 103 of 1902, ch. 655 of 1905, and ch. 417 of 1907.

§ 700. Persons between sixteen and thirty years.

A male between the ages of sixteen and thirty, convicted of felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may, in the discretion of the trial court, be sentenced to imprisonment in the New York State Reformatory at Elmira, to be there confined under the provisions of law relating to that reformatory.

Am'd by ch. 145 of 1888.

People ex rel. Duntz v. Coon, 67 Hun, 525; 51 N. Y. St. Rep. 344; 22 N. Y. Supp. 870.

§ 701. House of refuge, state industrial school and New York State training school for girls.

Where a male person under the age of twelve years is convicted of a crime amounting to felony, or where a male person of twelve years and under the age of sixteen years is convicted of crime, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provisions of the statute relating thereto. Where the conviction is had and the sentence is inflicted in the first, second or third judicial district, the place of confinement must be a house of refuge established by the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York; where the conviction is had and the sentence inflicted in any other district, the place of confinement must be in the State Industrial School. Where a female person not over the age of twelve years is convicted of a crime amounting to felony, or where a female person of the age of twelve years and not over the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing her to imprisonment in a state prison or in a penitentiary, direct her to be confined in the New York state training school for girls, under the provisions of the statute relating thereto. But nothing in this section shall affect any of the provisions contained in section seven hundred and thirteen.

Am'd by ch. 554 of 1896, and ch. 388 of 1904.

People v. Degnen, 54 Barb. 105; 6 Abb. (N. S.) 87; People v. Masten, 79 Hun, 581; Park v. People, 1 Lans. 283; Matter of Reilly, 81 Hun, 618; 18 Week. Dig. 515.

§ 702. Imprisonment in county jail.

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term less than one year, the imprisonment must be inflicted by confinement in the county jail, or place of confinement designated by law to be used as the jail of the county, except when otherwise specially prescribed by statute.

People v. Hughes, 137 N. Y. 33; 50 N. Y. St. Rep. 64; People v. Parr, 4 N. Y. Cr. Rep. 546.

§ 703. Id.; in county jail or state prison.

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term of one year, he may be sentenced to, and the imprisonment may be inflicted by, confinement either in a county jail, or in a penitentiary or state prison. No person shall be sentenced to imprisonment in a state prison for less than one year.

People v. Lyon, 99 N. Y. 210; People ex rel. Devoe v. Kelly, 97 N. Y. 212, aff'g 32 Hun, 536; 2 N. Y. Cr. Rep. 432; People v. Parr, 4 N. Y. Cr. Rep. 546; People v. Hughes, 137 N. Y. 33; 50 N. Y. St. Rep. 64.

§ 704. Id.; in state prison.

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term exceeding one year, or is sentenced to imprisonment for such a term, the imprisonment must be inflicted by confinement at hard labor in a state prison. But this and the two last sections shall not apply to a case where special provision is made by statute as to the punishment for any

particular offense or class of offenses or offenders, nor to the cases specified in sections 698, 699, 700 and 701.

People v. Sage, 17 Misc. 718; *People v. Dewey*, 83 N. Y. St. Rep. 427; 11 N. Y. Supp. 603; *People v. Hughes*, 137 N. Y. 33; 50 N. Y. St. Rep. 64.

§ 705. Place to be specified in sentence; removal.

The place of the imprisonment must be specified in the judgment and sentence of the court. But convicts may be removed from one place of confinement to another, in a case, and by the authority designated by statute.

People v. Lincoln, 62 How. Pr. 412; *People v. Kelly*, 2 N. Y. Cr. Rep. 428; 19 Week. Dig. 205; *Brown v. People*, 75 N. Y. 437; *People ex rel. King v. McEwen*, 62 How. Pr. 226; *Weed v. People*, 31 N. Y. 467.

§ 706. Limit of fine.

Where, in this Code, or in any other statute making any crime punishable by a fine, the amount of the fine is not specified, a fine of not more than five hundred dollars may be imposed.

See § 14, ante.

§ 707. Forfeiture.

A sentence of imprisonment in a state prison for any term less than for life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced.

Bowles v. Habermann, 95 N. Y. 247; *Davis v. Duffle*, 4 Abb. (N. S.) 478; *Miller v. Finkle*, 1 Park. 374; *O'Brien v. Hagan*, 1 Duer, 664; *La Chapelle v. Burpee*, 69 Hun, 438; 52 N. Y. St. Rep. 703; 23 N. Y. Supp. 455; *Avery v. Everett*, 110 N. Y. 317; 36 Hun, 6; 18 N. Y. St. Rep. 218; *People v. Meakim*, 133 N. Y. 221; 8 N. Y. Cr. Rep. 410; 44 N. Y. St. Rep. 751, aff'g 61 Hun, 327; 40 N. Y. St. Rep. 686; *Preston v. Palmer*, 42 Hun, 388.

§ 708. Consequence of sentence.

A person sentenced to imprisonment for life is thereafter deemed civilly dead.

Avery v. Everett, 110 N. Y. 823; 18 N. Y. St. Rep. 213, aff'g 36 Hun, 6; *O'Brien v. Hagan*, 1 Duer, 664; *Bowles v. Habermann*, 95 N. Y. 246; *Miller v. Finkle*, 1 Park. 374; *People v. Meakim*, 133 N. Y. 221; 44 N. Y. St. Rep. 751; 8 N. Y. Cr. Rep. 410, aff'g 61 Hun, 327; 40 N. Y. St. Rep. 686.

§ 709. Convict protected by law.

A convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not sentenced or convicted.

Bovles v. Habermann, 95 N. Y. 249; *Davis v. Duffle*, 4 Abb. Pr. (N. S.) 478.

§ 710. Certain forfeiture abolished.

A conviction of a person for any crime does not work a forfeiture of any property, real or personal, or of any right or interest

therein. All forfeitures to the people of the state, in the nature of deodands, or in a case of suicide, or where a person flees from justice, are abolished.

See § 178, ante; § 819, Code Crim. Pro.

People v. Hawker, 14 App. Div. 191; Bowles v. Habermann, 95 N. Y. 249; Preston v. Palmer, 42 Hun, 388; Darrow v. Family Fund Society, 42 Hun, 245.

§ 711. Convict voting.

The prohibition to vote at an election, contained in any statute of the state, shall not apply to a person heretofore or hereafter convicted of any crime, who has been sentenced or committed therefor to one of the houses of refuge, or other reformatories organized under the statutes of the state.

People v. Harrington, 1 How. Pr. (N. S.) 87; 15 Abb. N. C. 163; 3 N. Y. Cr. Rep. 141.

§ 712. Witnesses' testimony.

The sections of this Code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in a criminal proceeding, do not forbid such evidence being proved against such person upon any charge of perjury committed in such examination.

See §§ 79, 142, 241, 342, 469, ante.

People v. Sharp, 107 N. Y. 441; 5 N. Y. Cr. Rep. 572; 12 N. Y. St. Rep. 217.

§ 713. Sentence of minor.

When a person under the age of sixteen is convicted of a crime, he may, in the discretion of the court, instead of being sentenced to fine or imprisonment, be placed in charge of any suitable person or institution willing to receive him, and be thereafter, until majority or for a shorter term, subjected to such discipline and control of the person or institution receiving him as a parent or guardian may lawfully exercise over a minor. A child under sixteen years of age committed for misdemeanor, under any provision of this Code, must be committed to some reformatory, charitable or other institution authorized by law to receive and take charge of minors. And when any such child is committed to an institution, it shall, when practicable, be committed to an institution governed by persons of the same religious faith as the parents of such child.

Am'd by ch. 46 of 1884.

People v. Masten, 79 Hun, 581; People ex rel. Mary Magdalen School v. Dickson, 123 N. Y. 639, aff'd 57 Hun, 314; 32 N. Y. St. Rep. 496; 10 N. Y. Supp. 605; People ex rel. Cronin v. Carpenter, 25 Misc. 341; People ex rel. Sanfilippo v. N. Y. Prot., 38 Misc. 660.

§ 714. Convict as witness.

A person heretofore or hereafter convicted of any crime is, notwithstanding, a competent witness, in any cause or proceeding, civil or criminal, but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record, or by his cross-examination, upon which he must answer any

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proper question relevant to that inquiry; and the party cross-examining is not concluded by the answer to such question.

See § 393, Code Crim. Pro.; § 832, Code Civ. Pro.

Conviction in another state. *Nat. Trust Co. v. Gleason*, 77 N. Y. 400.

Cross-examination. *People v. Irving*, 95 N. Y. 541; *People v. Casey*, 72 N. Y. 393; *People v. Brown*, 72 N. Y. 571; *People v. Crapo*, 76 N. Y. 288.

Record of former conviction admissible. *People v. Satterlee*, 5 Hun, 167; *People v. Burns*, 33 Hun, 296; 2 N. Y. Cr. Rep. 425.

Competent witness. *People v. O'Neil*, 109 N. Y. 268; 6 N. Y. Cr. Rep. 55, aff'g 48 Hun, 45; 5 N. Y. Cr. Rep. 331; 14 N. Y. St. Rep. 829.

Object of this section. *People v. Chapleau*, 121 N. Y. 276; 30 N. Y. St. Rep. 994.

See also *People v. Bosworth*, 64 Hun, 80; 40 N. Y. St. Rep. 517; 19 N. Y. Supp. 118; *People v. Stokes*, 30 Abb. N. C. 210; *People v. Williams*, 92 Hun, 380; *People v. McGloin*, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. Rep. 154, aff'g 28 Hun, 155; 1 N. Y. Cr. Rep. 105; *People v. Parr*, 42 Hun, 316; 4 N. Y. Cr. Rep. 545; 5 N. Y. Cr. Rep. 36; *Donohue v. Whippert*, 7 Misc. 508; *People v. Sebring*, 14 Misc. 33; *People v. Ledwon*, 15 Misc. 285; *Irwin v. Met. St. Ry. Co.*, 25 Misc. 198; *People v. Rose*, 52 Hun, 37; 22 N. Y. St. Rep. 393; *Newcomb v. Griswold*, 24 N. Y. 298; *People v. Hovey*, 92 N. Y. 554; 29 Hun, 382; *People v. Schewe*, 29 Hun, 122; *Morenus v. Crawford*, 51 Hun, 96; 24 N. Y. St. Rep. 184; 5 N. Y. Supp. 457; *Spiegel v. Hays*, 118 N. Y. 660; 27 N. Y. St. Rep. 858; *Shay v. People*, 22 N. Y. 317; *Gardner v. Bartholomew*, 40 Barb. 325; *Ryan v. People*, 79 N. Y. 593; *People v. Noelke*, 94 N. Y. 137; 1 N. Y. Cr. Rep. 500; *People v. Kelly*, 86 N. Y. 353; 35 Hun, 304; 3 N. Y. Cr. Rep. 36; *People v. Petmeckey*, 99 N. Y. 415.

§ 715. Husband and wife as witnesses.

The husband or wife of a person indicted or accused of a crime is in all cases a competent witness, on the examination or trial of such person; but neither husband nor wife can be compelled to disclose a confidential communication made by one to the other during their marriage.

See §§ 828, 831, 832, Code Civ. Pro.

Wife as witness. *People v. Petmeckey*, 99 N. Y. 415, aff'g 2 N. Y. Cr. Rep. 458; *People v. Bosworth*, 64 Hun, 82; 45 N. Y. St. Rep. 519; 19 N. Y. Supp. 118; *People v. Truck*, 170 N. Y. 203.

Right must be enforced by objection. *People v. Wood*, 126 N. Y. 271; 36 N. Y. St. Rep. 966.

See also *Chamberlain v. People*, 23 N. Y. 89; *People v. Houghton*, 24 Hun, 501; *People v. Carpenter*, 9 Barb. 580; *Dennis v. Crittenden*, 42 N. Y. 542; *Bertles v. Nunan*, 92 N. Y. 152; *People v. Hovey*, 29 Hun, 382; *Wilke v. People*, 53 N. Y. 525; *People v. Lewis*, 42 N. Y. St. Rep. 768; 16 N. Y. Supp. 884; *People v. Briggs*, 60 How. Pr. 31; *People v. Wentworth*, 4 N. Y. Cr. Rep. 210; *People v. Northrop*, 50 Barb. 147; *People ex rel. Comrs. v. Bartholf*, 24 Hun, 272; *Foster's case*, 13 Abb. N. S. 372.

§ 716. Creditor of convict.

A person injured by the commission of a felony, for which the offender is sentenced to imprisonment in a state prison, is deemed the creditor of the offender, and of his estate after his death, within the provisions of the statutes relating thereto.

§ 717. Damages, how ascertained.

In a case specified in the last section, the damages sustained by the person injured by the felonious act, may be ascertained in an action brought for that purpose by him against the trustees of the estate of the offender, appointed under the provisions of the statutes, or the executor or administrator of the offender's estate.

§ 717a. Misrepresenting circulation of newspaper.

Every proprietor or publisher of any newspaper or periodical who shall willfully or knowingly misrepresent the circulation of such newspaper or periodical for the purpose of securing advertising or other patronage shall be deemed guilty of a misdemeanor.

Added by ch. 650 of 1893.

§ 718. Construction of terms.

In construing this Code, or an indictment or other pleading in a case provided for by this Code, the following rules must be observed, except when a contrary intent is plainly declared in the provision to be construed, or plainly apparent from the context thereof:

1. Each of the terms "neglect," "negligence," "negligent," and "negligently," imports a want of such attention to the nature or probable consequences of the act or omission, as a prudent man ordinarily bestows in acting in his own concerns;
2. Each of the terms "corrupt" and "corruptly" imports a wrongful desire to acquire, or cause some pecuniary or other advantage to, or by the person guilty of the act or omission referred to, or some other person;
3. Each of the terms "malice" and "maliciously" imports an evil intent, or wish or design to vex, annoy, or injure another person, or to maltreat or injure an animal;
4. The term "knowingly" imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of the unlawfulness of the act or omission;
5. Where an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person;
6. The term "vessel" includes ships, steamers, canal-boats, and every boat or structure adapted to navigation, or movement from place to place by water, either upon the ocean, lakes, rivers, or artificial water ways;
7. The term "signature" includes any memorandum, mark, or sign, written with intent to authenticate any instrument or writing, or the subscription of any person thereto;
8. The term "writing" includes both printing and writing;
16. The terms "reputed house of prostitution or assignation," "house of prostitution," "house of ill-fame or assignation," "disorderly house," include all premises which by common fame or report are used for purposes of prostitution or assignation.

Am'd by ch. 384 of 1882 and ch. 31 of 1886.

See § 721, post.

Subdivisions 9-15, inclusive, repealed by ch. 677 of 1892, the Statutory Construction Law, §§ 2, 3, 4 and 5 of that act.

Subd. 1. *People v. Buddensieck*, 103 N. Y. 487; 1 N. Y. St. Rep. 450; 4 N. Y. Cr. Rep. 266; *Moebus v. Hermann*, 108 N. Y. 353; 18 N. Y. St. Rep. 648.

Subd. 3. *People v. Stark*, 59 Hun, 57; 35 N. Y. St. Rep. 154; 12 N. Y. Supp. 691; *Anderson v. How*, 116 N. Y. 341; 26 N. Y. St. Rep. 790; *People v. Camp*, 66 Hun, 535; 51 N. Y. St. Rep. 34; 20 N. Y. Supp. 744.

Subd. 5. *People v. D'Argencour*, 95 N. Y. 624; 2 N. Y. Cr. Rep. 267, aff'g 32 Hun, 179; *People v. Martin*, 36 Hun, 462; 3 N. Y. Cr. Rep. 122, rev'g 2 N. Y. Cr. Rep. 52.

Subd. 6. *Crawford v. Collins*, 30 How. Pr. 398; 45 Barb. 269; *Walsh v. N. Y. Dock Co.*, 77 N. Y. 448, aff'g 8 Daly, 387.

Subd. 16. *People v. Hatter*, 22 N. Y. Supp. 691; *Collyer v. Collyer*, 50 Hun, 424; 21 N. Y. St. Rep. 119; 3 N. Y. Supp. 311.

See also *People v. Barondess*, 41 N. Y. St. Rep. 630; 61 Hun, 574; 16 N. Y. Supp. 41; 8 N. Y. Cr. Rep. 234, rev'g 45 N. Y. St. Rep. 248; 8 N. Y. Cr. Rep. 376; *People v. Moore*, 37 Hun, 84; 3 N. Y. Cr. Rep. 458; *People v. Stevens*, 38 Hun, 65; 8 N. Y. Cr. Rep. 586; *People v. Lovejoy*, 37 App. Div. 55; *People v. Long Island R. R. Co.*, 134 N. Y. 509; 47 N. Y. St. Rep. 650, aff'g 58 Hun, 412; 34 N. Y. St. Rep. 715; *People v. Christy*, 65 Hun, 351; 47 N. Y. St. Rep. 926; 8 N. Y. Cr. Rep. 480; 20 N. Y. Supp. 279; *People v. Wise*, 2 How. (N. S.) 92; *Matter of McMahon*, 66 How. 192; *New York Guaranty Co. v. Gleason*, 53 How. Pr. 125; *People v. May*, 27 Barb. 238; *People v. Rector*, 22 N. Y. 44; *People ex rel. Bay State, etc., Co. v. McLean*, 80 N. Y. 259; *British, etc. v. Comrs.*, 31 N. Y. 82; *Rosenplanter v. Roessle*, 54 N. Y. 288; *Republic of Honduras v. Soto*, 112 N. Y. 310; *People v. Clements*, 3 N. Y. St. Rep. 700; *Sherman v. Transportation*, 62 Barb. 150; *United States T. Co. v. West Union Co.*, 58 Barb. 47; *Phelps v. People*, 72 N. Y. 350.

§ 719. Application of this Code to prior offenses.

Nothing contained in any provision of this Code applies to an offense committed or other act done, at any time before the day when this Code takes effect. Such an offense must be punished according to, and such act must be governed by, the provisions of law existing when it is done or committed, in the same manner as if this Code had not been passed; except that, whenever the punishment or penalty for an offense is mitigated by any provision of this Code, such provision may be applied to any sentence or judgment imposed for the offense after this Code takes effect. An offense specified in this Code, committed after the beginning of the day when this Code takes effect, must be punished according to the provisions of this Code, and not otherwise.

See § 2, ante; § 962, Code Crim. Pro.

Application. *People v. Raymond*, 96 N. Y. 88.

Punishment. *People v. Dowling*, 1 N. Y. Cr. Rep. 530.

See also *People v. McTameney*, 30 Hun, 505; 13 Abb. N. C. 55; 1 N. Y. Cr. Rep. 437; 66 How. 74; *People v. Jaehne*, 103 N. Y. 189; 8 N. Y. St. Rep. 11; 4 N. Y. Cr. Rep. 478; *People v. Keeler*, 99 N. Y. 474; 3 N. Y. Cr. Rep. 354; 82 Hun, 589; *Matter of Hoffman*, 1 N. Y. Cr. Rep. 484; *People v. O'Neill*, 109 N. Y. 251; *People v. England*, 91 Hun, 155; *People v. Coffee*, 62 How. Pr. 445; *People v. Beckwith*, 108 N. Y. 67; *People ex rel. Van Houten v. Sadler*, 97 N. Y. 146; 3 N. Y. Cr. Rep. 147; *People v. Catholic Prot.*, 4 N. Y. Cr. Rep. 79; *Wallach v. Sippilli*, 65 How. 501; *Matter of Hallenbeck*, 65 How. 401; *People v. Burleigh*, 1 N. Y. Cr. Rep. 522; *Matter of Walker*, 62 How. 352.

§ 720. Id.

The provisions of this Code are not to be deemed to affect any civil rights or remedies existing at the time when this Code takes effect, by virtue of the common law or of any provision of statute.

Reynolds v. Everett, 67 Hun, 304; 50 N. Y. St. Rep. 897; 22 N. Y. Supp. 318.

§ 721. Intent to defraud.

Whenever, by any of the provisions of this Code, an intent to defraud is required, in order to constitute an offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate, whatever.

See § 718, subd. 5, ante.

§ 722. Civil remedies preserved.

The omission to specify or affirm in this Code any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 723. Proceedings to impeach, etc., preserved.

The omission to specify or affirm in this Code any ground or forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

Collyer v. Collyer, 21 N. Y. St. Rep. 119; 50 Hun, 424.

§ 724. Military punishments, etc., preserved.

This Code does not affect any power conferred by law upon any court-martial or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officers, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants, except so far as any provisions therein are inconsistent with this Code.

People ex rel. McDonald v. Keeler, 90 N. Y. 475; 8 N. Y. Cr. Rep. 354; *Matter of Riley*, 81 Hun, 618; 18 Week. Dig. 515; *Matter of McMahon*, 1 N. Y. Cr. Rep. 60; 64 How. 285.

§ 725. Certain statutes continuing in force.

Nothing in this Code affects any of the provisions of the following statutes; but such statutes are recognized as continuing in force, notwithstanding the provisions of this Code; except so far as they have been repealed or affected by subsequent laws;

1. All acts incorporating municipal corporations, and acts amending acts of incorporation or charters of such corporation, or pro-

viding for the election or appointment of officers therein, or defining the powers and duties of such officers;

2. All acts relating to emigrants or other passengers in vessels coming from foreign countries, except as provided in section 626 of this Code.

3. All acts for the punishment of intoxication or the suppression of intemperance or regulating the sale or disposition of intoxicating or spirituous liquors.

4. All acts defining and providing for the punishment of offenses and not defined and made punishable by this Code.

Am'd by ch. 384 of 1882.

Object. People v. Jaehne, 103 N. Y. 188; 3 N. Y. St. Rep. 11; 4 N. Y. Cr. Rep. 478; 6 N. Y. Cr. Rep. 239.

Repeal. Rockwood v. Oakfield, 2 N. Y. St. Rep. 331; People v. Page, 22 N. Y. St. Rep. 278.

Subd. 3. People v. Schewe, 1 N. Y. Cr. Rep. 371; People v. Myers, 95 N. Y. 223; 2 N. Y. Cr. Rep. 128.

Subd. 4. Matter of McMahon, 64 How. 285; 1 N. Y. Cr. Rep. 58; People v. Bernardo, 1 N. Y. Cr. Rep. 245; People v. Page, 22 N. Y. St. Rep. 277.

See also People v. Markell, 20 Misc. 154; People v. Moran, 123 N. Y. 254; 38 N. Y. St. Rep. 398; 8 N. Y. Cr. Rep. 106, rev'g 54 Hun, 279; 27 N. Y. St. Rep. 20; 7 N. Y. Cr. Rep. 333; People v. Rontey, 117 N. Y. 624, rev'g 21 N. Y. St. Rep. 174; 6 N. Y. Cr. Rep. 249; 4 N. Y. Supp. 235; People v. Van Houten, 13 Misc. 609.

§ 726. General repeal.

All acts and parts of acts which are inconsistent with the provisions of this act are repealed, so far as they impose any punishment for crime, except as herein provided.

Act of 1862. People v. Bernardo, 1 N. Y. Cr. Rep. 247.

Act of 1872. People v. Hatter, 22 N. Y. Supp. 688.

Code is substitute for previously existing statutes. People v. Hallenbeck, 1 N. Y. Cr. Rep. 437; 65 How. 401.

Acts repealed. Matter of McMahon, 1 N. Y. Cr. Rep. 58; 64 How. Pr. 285; Matter of Riley, 81 Hun, 613; People v. McTameney, 80 Hun, 505; 13 Abb. N. C. 55; 1 N. Y. Cr. Rep. 437; 66 How. Pr. 73.

See also People v. Rontey, 117 N. Y. 624, aff'g 21 N. Y. St. Rep. 175; 6 N. Y. Cr. Rep. 249; 4 N. Y. Supp. 235; People ex rel. McDonald v. Keeler, 99 N. Y. 468; 3 N. Y. Cr. Rep. 354; Rockwood v. Oakfield, 2 N. Y. St. Rep. 335; People ex rel. Van Heck v. Catholic Prot., 38 Hun, 127; 4 N. Y. Cr. Rep. 79; People v. Russell, 3 N. Y. Cr. Rep. 475; People v. Jaehne, 103 N. Y. 182; 4 N. Y. Cr. Rep. 478; 3 N. Y. St. Rep. 11; People v. Courtney, 1 N. Y. Cr. Rep. 64; People v. Trumble, 1 N. Y. Cr. Rep. 442.

§ 727. When act to take effect.

This act shall take effect on the first day of December, 1882. When construed in connection with other statutes, it must be deemed to have been enacted on the fourth day of January, eighteen hundred and eighty-one, so that any statute enacted after that day is to have the same effect as if it had been enacted after this Code.

Am'd by ch. 102 of 1882.

Amendment by ch. 102 of 1882, postponed time of taking effect. The Penal Code, without the amendment, was enacted January 4, 1881. People ex rel. Van Heck v. Catholic Prot., 38 Hun, 185.

Construction. People ex rel. Knowlton v. Sadler, 2 N. Y. Cr. Rep. 440. See also People v. Ryland, 2 N. Y. Cr. Rep. 440; People v. Beckwith, 108 N. Y. 67; 45 Hun, 423; 7 N. Y. Cr. Rep. 162; 12 N. Y. St. Rep. 795; People v. Page, 22 N. Y. St. Rep. 277; 7 N. Y. Cr. Rep. 5; 4 N. Y. Supp. 780; People v. Jaehne, 108 N. Y. 188; 4 N. Y. Cr. Rep. 478; People v. Koenig, 9 App. Div. 438; People v. O'Neill, 109 N. Y. 261, aff'g 48 Hun, 46; People ex rel. McLaughlin v. Finn, 87 N. Y. 533, aff'g 26 Hun, 59; Matter of McMahon, 1 N. Y. Cr. Rep. 63.

§ 728. Repeal must be express.

No provision of this Code, or any part thereof, shall be deemed repealed, altered or amended by the passage of any subsequent statute inconsistent therewith, unless such statute shall explicitly refer thereto and directly repeal, alter or amend this Code accordingly.

Added by ch. 31 of 1886.

See Statutory Construction Law, ch. 677 of 1892, §§ 31-34, inclusive, as to repealing statutes.

People v. Hatter, 22 N. Y. Supp. 690; Mongeon v. People, 55 N. Y. 618; People v. Cleary, 18 Misc. 551; American Society v. City of Gloversville, 78 Hun, 42; Nash v. White's Bank, 105 N. Y. 243.

§ 729. Producing unpublished, etc., opera, without consent of owner.

Any person who causes to be publicly performed or represented for profit any unpublished, undedicated or copyrighted dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished, undedicated or copyrighted and without the consent of its owner, or proprietor, permits, aids or takes part in such a performance or representation, shall be guilty of a misdemeanor.

Added by ch. 475 of 1890.

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